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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 794

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, *Petitioner,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN and R. E. CARROLL, *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D. C. 20005

JAMES R. WOLFE
CHARLES I. HOPKINS, JR.
Union Station Building
Chicago, Illinois 60606
Attorneys for National Railway Labor Conference, Amicus Curiae.

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D. C. 20005
Of Counsel

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Interest of the Amicus Curiae

The National Railway Labor Conference, the *amicus curiae* on whose behalf this brief is submitted, represents the great majority of American railroads. Its function is to assist these railroads in connection with labor relations problems and to represent them in contract negotiations that are national in scope. In this connection, the Conference speaks for virtually the entire railroad industry. A list of the member railroads appears in Appendix A, pp. 39-41, *infra*.

The respondent in this case, the Brotherhood of Railroad Trainmen, is an unincorporated labor organization which

represents certain railroad employees in 48 of the 50 states. The Brotherhood holds the right under the Railway Labor Act (45 U.S.C. § 151 et seq.) to represent trainmen employed by the great majority of the members of the Conference, and also to represent conductors on many member roads. A number of other national railway labor organizations, resembling the Brotherhood in organizational structure and method of operation, hold representation rights with respect to most other employees of members of the Conference. See Thirty-First Annual Report of the National Mediation Board, pp. 78-83, reprinted as Appendix B, pp. 42-48, *infra*.[1]

An affirmance of the decision below would have serious consequences throughout the railroad industry and would adversely affect the Conference and its members because it would require that numerous important suits against railway labor organizations either be tried in an exceedingly inconvenient forum or be prosecuted against local officers of the union in the absence of the most important potential defendant, the national union itself. The court below held that under the general venue statute (28 U.S.C. § 1391), proper venue for a non-diversity suit against an unincorporated labor union is limited to the district in which the union is headquartered (in this case, Cleveland, Ohio), and does not include other districts, in which the union is doing business, located at or near the scene of the parties' controversy (Colorado and Utah). That holding is directly in conflict with the contrary holding in *Rutland*

[1] The Thirty-First Annual Report of the National Mediation Board, for the fiscal year ended June 30, 1965, shows that the Brotherhood represents one or more classes or crafts of railroad employees on 91 "selected rail carriers," nearly all of which are members of the Conference. Compare Appendices A and B hereto. Because the Mediation Board Report lists "selected" carriers only, the listing does not show all the carriers in the Conference on which the Brotherhood holds representation rights.

Railway Corp. v. *Brotherhood of Locomotive Engineers*, 307 F.2d 21 (2d Cir. 1962), *cert. denied*, 372 U.S. 954. As we show in some detail below (pp. 27-37, *infra*), the Brotherhood of Railroad Trainmen, like most other national railway labor organizations, consists of a national organization and numerous subordinate local entities on each of the railroads in 48 states on which the Brotherhood holds representation rights. The national organization is designated under the Railway Labor Act as the employees' representative, and discharges its function in that regard, under the Brotherhood's Constitution and General Rules, through its subordinate local organizations and their officers. Accordingly, in the usual railway labor suit (of which this case is an excellent example), the proper venue under the decision below would be in a forum having relatively little connection with the controversy—far removed from the railroad and the employees involved, the subject matter of the litigation, and the location of witnesses, records, and the parties' principal representatives in the dispute. Trial of such cases in such a forum frequently would be excessively expensive and inconvenient. The consequences of an affirmance of the decision below would be particularly injurious in the case of enjoinable strikes instituted in violation of the requirements of the Railway Labor Act. In the usual case of that kind, relief must be obtained immediately if irreparable injury is to be avoided, and thus must be obtained from a court in the vicinity of the strike, yet to be fully effective relief must run against the national organization, which under the Brotherhood's Constitution has the power both to authorize strikes and to end them.[2]

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[2] When the court below rendered its decision, Section 1391(b) of the Judicial Code (28 U.S.C. § 1391 (b)) provided for venue in non-diversity cases only "in the judicial district where all defendants reside." Subsequently, Section 1391(b) was amended to provide for venue also in the "district . . . in which the claim arose." Public Law 89-714, approved

Statement

The Brief for Petitioner sets forth a detailed and accurate statement of the facts, and we see no purpose in repeating that statement here. We also agree with the arguments presented in the Brief for Petitioner, but believe that it may be helpful to the Court to stress certain considerations which we deem to be of general importance. In particular, because the statutory venue requirements are intended to serve "the convenience of litigants"[3] and an affirmance of the decision below could seriously inconvenience the conduct of much litigation involving the Railway Labor Act (45 U.S.C. § 151 *et seq.*), we discuss in some detail the practical ramifications of the venue issue in terms of railway labor litigation.

Summary of Argument

The question before the Court is whether, for purposes of the general venue statute applicable to "federal question" litigation, 28 U.S.C. § 1391, an unincorporated labor union "resides" in each district in which it is "doing business."

Nov. 2, 1966. That amendment *may* alleviate some of the serious consequences of the limitation on venue which otherwise would result from an affirmance of the decision below. However, it will not alleviate all such problems by any means. Among other things, there will be cases in which the district in which the claim "arises" is not as convenient a forum as other districts in which venue would be proper under the *Rutland* decision. For example, a union may call a strike in one district against a railroad which operates in several, and the district in which the strike occurs may be a district other than the district in which the union's most important responsible local official (the General Chairman) is located. Moreover, "[t]he selection of venue should be a simple, almost mechanical, process unhampered by complex requirements," 1 Moore's Federal Practice (2d ed), p. 1318, and determining where "the claim arose" in the many railway labor disputes which have multi-district contacts will be a matter which will be anything but a "simple, almost mechanical, process." To the contrary, it is predictable that the new provision will breed extensive litigation in the future.

[3] *Neirbo Co.* v. *Bethlehem Corp.*, 308 U.S. 165, 168 (1939).

Rutland Railway Corp. v. *Brotherhood of Locomotive Engineers*, 307 F.2d 21 (2d Cir. 1962), *cert. denied*, 372 U.S. 954, held that an unincorporated labor union does so reside. The Court below held, to the contrary, that the residence of an unincorporated labor union is limited to the district in which its headquarters are located. We submit that the *Rutland* decision is sound, the decision below unsound, both as an analytical matter, and as a matter of venue policy.

Before the decision in *United Mine Workers* v. *Coronado Co.*, 259 U.S. 344 (1922), unincorporated associations could not sue or be sued, as such, in federal court. However, that decision, and Rule 17(b) of the Federal Rules of Civil Procedure, established the capacity of such associations to sue and be sued in "federal question" litigation. Consequently, it became necessary for the courts to establish the rules by which the venue statutes would be applied to such associations.

By the time the present general venue statute was enacted in 1948, the basic rules governing venue as to unincorporated associations had been developed. The leading decision was *Sperry Products* v. *Association of American Railroads*, 132 F.2d 408 (2d Cir. 1942). In that decision, Judge Learned Hand, for the Second Circuit, held that although unincorporated associations are deemed to be mere aggregations of individuals for purposes of determining whether diversity jurisdiction exists, in cases in which they are sued under the *United Mine Workers* doctrine, they should be regarded as jural persons for procedural incidents of suit, including venue. Further, he held that the location attributed to such entities for venue purposes should be determined by the tests applied to corporations, rather than by some new test devised for unincorporated associations alone. This approach, he believed, had the virtues of simplicity and practicality, and thus was supported by fundamental venue policy. On those premises, Judge Hand went

on to hold, by analogy to the law regarding corporations as it existed at the time, that an unincorporated association resides in a single district, that of its principal place of business.

Thus, *Sperry Products* established two fundamental rules regarding venue of unincorporated associations—(1) that such associations should be regarded as jural entities for venue purposes, and (2) that so regarded, their residence should be determined by tests applied to corporations. In 1948, Congress enacted the present general venue statute, 28 U.S.C. § 1391. Nothing in that statute altered the two fundamental rules established by *Sperry Products*. However, Section 1391(c) redefined corporate residence to substitute a multi-district residence based on "doing business." Accordingly, the question arose whether the corporate analogy to be used in determining venue of unincorporated associations should continue to be the pre-1948 corporate analogy, or the current corporate analogy. A few early lower court decisions, noting the *holding* in *Sperry Products* but failing to analyze the premises on which it rested, held that the residence of an unincorporated association was still limited to the association's principal place of business. However, a majority of courts, including the Second Circuit in *Rutland*, held that the corporate analogy which should be used to determine residence of unincorporated associations should be the current corporate analogy, and thus that unincorporated unions reside in each district in which they are "doing business." That result was justified on the ground that it accords "with the practical requirements of litigation involving unincorporated associations," 307 F.2d at 29-30, and thus, since "venue is a concept of convenience," *id.* at 29, is consistent with fundamental venue policy.

In any event, until the decision below, no court challenged

the two fundamental rules established by *Sperry Products* —that for venue purposes, unincorporated associations should be regarded as entities, with a residence determined by analogy to corporations. Any uncertainty in the law was limited to the question whether the analogy should be to the law regarding corporations before, or after, 1948.

The Court below held that an unincorporated association resides only in the district of its principal place of business. It rested that conclusion, however, on the assertion that this Court's decision in *Steelworkers* v. *Bouligny, Inc.*, 382 U.S. 145 (1965), "was a rejection of the principle espoused by the *Rutland* case." By intruding the rule of *Steelworkers* into the law of venue, the decision below strikes at the settled fundamentals of the law we have just described.

In *Steelworkers*, this Court refused to change the rule, established since *Chapman* v. *Barney*, 129 U.S. 677 (1889), that "for purposes of federal diversity jurisdiction," an unincorporated association is to be treated as an aggregation of individuals. The Court recognized the force of arguments advanced in support of a change in that rule, but held nevertheless that "pleas for an extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts." 382 U.S. at 150-151. There is nothing in that holding, or in the reasons given for it, which has any relevance to venue. The established rule for purposes of diversity jurisdiction—that unincorporated associations are deemed to be aggregations of individuals in testing diversity—differs from the established rule for venue purposes—that unincorporated associations are deemed to be jural persons in determining residence—because the considerations which underlie the two different rules differ. Unlike jurisdiction, venue, "though defined by legislation

relates to the convenience of litigants." *Neirbo Co.* v. *Bethlehem Corp.*, 308 U.S. 165, 168 (1939). The decision below, by extending the principles expressed in *Steelworkers* to the law of venue, would change established law as to venue developed in response to considerations of convenience, on the strength of a decision that refused to change established law as to jurisdiction developed in response to quite different considerations.

Moreover, the inapplicability of *Steelworkers* to venue is emphasized by the fact that the Court below, while purporting to be guided by *Steelworkers*, actually refused to follow the principles expressed in that decision. The Court below held that the Brotherhood resides only in its headquarters district, the Northern District of Ohio, and not in the District of Colorado. That result cannot be premised on *Steelworkers*.

As a conceptual matter, *Steelworkers* treats unions as aggregations of individuals each of whom is deemed to be a party to a lawsuit for purposes of determining whether diversity of citizenship exists. If that approach is applied in determining residence of "all defendants" for purposes of the general venue statute, there is *no* proper residence venue for a suit against a large labor union because "all defendants"—all union members—do not reside in any single district. In this case, venue would not lie in the Northern District of Ohio any more than it would in the District of Colorado.

On the other hand, in more practical terms, *Steelworkers* treats unions—which are the real parties to the litigation—as though they are citizens of each state in which they have members who are citizens. If the same practical approach were applied to the general venue statute, unions would "reside" in each district in which their members reside. Thus, in this case, venue would be equally proper both in

the Northern District of Ohio and in the District of Colorado. While we believe that *Steelworkers* is irrelevant to venue, if *Steelworkers* is to be applied to venue problems, we submit that this practical approach is clearly the most defensible approach to the problem.

In any event, *Steelworkers* cannot be used to support the holding below that the Brotherhood resides only in the District in which its national headquarters are located. Support for that holding can only be found in those few decisions, antedating *Rutland*, which treat unions as entities with a residence determined by analogy to the tests developed for corporations prior to 1948. For reasons advanced in the *Rutland* decision, we submit that the proper corporate analogy is to the law regarding corporations today, not to the law which existed two decades ago.

Moreover, fundamental venue policy supports the *Rutland* holding that a union resides wherever it is "doing business," as contrasted with the holding below that a union resides only in its headquarters district. Venue rules are intended to serve "the convenience of litigants." *Neirbo Co.* v. *Bethlehem Corp.*, *supra*. Large labor unions, like large corporate enterprises, conduct their business throughout the nation through numerous local agents and representatives. Their activities give rise to much litigation. As is illustrated by an analysis of the manner in which the respondent Brotherhood performs its representation function under the Railway Labor Act, a forum in the vicinity of union activities which give rise to litigation ordinarily is a far more convenient forum than the district in which the union's national headquarters is located. That is equally true both for the union and its opponents. In these circumstances, a rule which would tend to restrict venue of such litigation to the union's headquarters is opposed to fundamental venue policy. Further, such a rule

would tend to immunize unions, their national officers, and their treasuries, from responsibility for their activities at the site of those activities—the place where relief must be available if it is to be fully effective. Since a rule restricting venue to the union's headquarters district is opposed to fundamental venue policy, and since Congress has left the courts free to devise a rule which serves those policies, there is no reason why the courts should adopt a rule for unincorporated associations which has exactly the sort of "intolerable" consequences which led Congress to change the rule regarding corporations in 1948.

In short, unions should be held to reside, for purposes of the general venue statute, wherever they are "doing business." If a union is sued in what is really an inconvenient forum, the matter can be controlled under the transfer provisions of 28 U.S.C. § 1404(a).

Argument

Venue in this case is governed by Section 1391(b) of the Judicial Code, as it read prior to the enactment of P.L. 89-714:[4]

> "(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law."

The issue before the Court is whether an unincorporated labor union "resides," for purposes of Section 1391(b), in districts in which it is "doing business." In the first section of this argument, we show that in principle, the court below was in error, the *Rutland* court right. An unincorporated association should be held to reside in each district in which it does business. In the second section of the

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[4] See footnote 2, p. 3, *supra*.

argument, we show that the result below would greatly inconvenience both union and railroad litigants, and thus is opposed to the very purpose of venue provisions. By way of contrast, the holding in *Rutland* is sound as a matter of venue policy.

I. The Decision Below Is Unsound in Principle

As we show below, before the enactment of the present general venue statute in 1948 it was established that unincorporated associations sued in their own right should be regarded as entities for venue purposes, their residence to be determined by analogy to corporations. Prior to 1948, by analogy to corporations, the residence of unincorporated associations was held to be limited to a single district—that of the principal place of business. In 1948, Congress redefined corporate residence to extend to all districts in which a corporation is doing business. *Rutland Railway Corp.* v. *Brotherhood of Locomotive Engineers,* 307 F. 2d 21 (2d Cir. 1962), *cert. denied,* 372 U.S. 954, and a number of other decisions held that the residence of unincorporated associations accordingly was extended to all districts in which they are doing business.

There are two theories on which the *Rutland* rule might be rejected. The first would be that while unincorporated associations are entities for venue purposes, their residence should be determined by some test other than the test applied to corporations today. One such test is the pre-1948 corporation test—which leads to the conclusion that the only residence of an unincorporated association is at its principal place of business. That test was adopted by a few lower court decisions, all of which antedated *Rutland,* which provide the only support for the result reached by the court below. The only other available alternative would be to devise an entirely new test for unincorporated asso-

ciations—*e.g.*, to hold that unincorporated associations are resident and venue is proper wherever their members reside, which in the case of the Brotherhood would be in 48 of the 50 states, including the District of Colorado.

The second and more radical basis on which the *Rutland* rule might be rejected would be to hold that unincorporated associations are not to be regarded as entities for venue purposes but instead are to be regarded as mere aggregations of individuals, all of whom are to be deemed "defendants" when the association is sued. If so, since members of large labor unions reside in more than one district, venue would never be proper under the residency provision in Section 1391(b)—not "all defendants [*i.e.*, members of the association] reside" in any one district. Such a holding would overturn venue doctrines which have been established for 25 years and would force much railway labor litigation now entertained by federal courts into the state courts.

The Court below stated that the choice before it was between two alternatives both of which assume that for venue purposes the Brotherhood is an entity with a residence determined by analogy to corporations. That is, the Court below indicated that venue in this case depends on whether the Brotherhood is held to reside in districts in which it is doing business (Colorado)—the post-1948 corporation approach—or only in the district of its principal place of business—the pre-1948 corporation approach. Illogically, however, the Court rejected the post-1948 corporate analogy advocated by the Rio Grande, not on the ground that pre-1948 law remained unchanged with respect to unincorporated associations, but instead on the ground that *Steelworkers* v. *Bouligny, Inc.*, 382 U.S. 145 (1965), "was a rejection of the principle espoused by the *Rutland* case." *Steelworkers* held that for diversity jurisdiction

purposes, unincorporated associations are mere aggregations of individuals. Thus, if *Steelworkers* were relevant to venue (which as we show it is not), neither alternative stated by the Court below would be correct. Rather the Brotherhood would be a group of individuals living in more than one district, and thus venue would lie nowhere.

We think the decision below is unsupportable. The intrusion into the venue area of the *Steelworkers* principle, justified in its own sphere on the ground that changes in the previously settled boundaries of federal jurisdiction should be made by Congress, not by the courts, would overturn established fundamentals in the venue area. There is no justification for that. No such result was contemplated when Congress enacted the present venue statute without changing the then existing rule that unincorporated associations are entities for purposes of the residency requirement. In short, for venue purposes unincorporated associations should be viewed as entities. Thus viewed, we submit that the corporate analogy should still be followed, and that the analogy should be to post-1948 law, not to earlier rules.

Before the decision in *United Mine Workers* v. *Coronado Co.*, 259 U.S. 344 (1922), unincorporated associations could not, as such, be sued in federal court. *Sperry Products* v. *Association of American Railroads*, 132 F.2d 408, 410 (2d Cir. 1942). In the *Coronado Coal* case, however, this Court ruled that unincorporated associations could be sued in their own right, and that such associations' funds could be reached by execution on the judgment. "It would be unfortunate," the Court said, "if an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of four hundred thousand members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much

unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in course of such strikes." 259 U.S. at 388-389. When the Federal Rules of Civil Procedure were adopted, the capacity of unincorporated associations to sue and be sued in "federal question" litigation was confirmed by Rule 17(b): "[C]apacity to sue or be sued shall be determined by the law of the state in which the district court is held, except . . . that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States. . . ."

After capacity for suit was established, the question of venue arose. In 1942, the Second Circuit decided *Sperry Products v. Association of American Railroads*, 132 F.2d 408 (2d Cir. 1942), which established the two basic principles which the courts have followed consistently until the decision below in determining venue with respect to unincorporated associations: (1) that for venue purposes unincorporated associations should be regarded as jural entities, and (2) that their "inhabitance"—a term synonymous with "residence" in Section 1391[5]—should be determined by analogy to the entities they most closely resemble —corporations.

The venue statute involved in the *Sperry Products* case, 28 U.S.C. §109 (1940) (now 28 U.S.C. §1400(b) (1958)), stated that suits for patent infringement might be brought "in the district of which the defendant is an inhabitant, or in any district in which the defendant . . . shall have committed acts of infringement and have a regular and

[5] See the Reviser's Note to § 1391, H.R. Rep. No. 308, 80th Cong., 1st Sess., A147 (1947).

established place of business." At the outset of the opinion for the Court, Judge Learned Hand noted that for jurisdictional purposes an unincorporated association is deemed a mere aggregation of individuals and has no citizenship of its own (132 F.2d at 410-411):

> "[I]n the matter of jurisdiction over the subject matter, an unincorporated association is disregarded: when for example jurisdiction depends upon diversity of citizenship, it is the citizenship of the members alone which counts. Levering & Garrigues Co. v. Morrin, 2 Cir., 61 F.2d 115. Thus, for most purposes the law still looks at such associations as mere aggregations of individuals."

However, Judge Hand thought that since unincorporated associations were deemed to be entities for purposes of capacity to sue they should also be viewed as such for other procedural incidents of suit such as venue, which is intended to serve the convenience of litigants (*id.* at 411):

> "Since, however, for the purpose of suit [the law] has come to regard them as jural entities, we can see no reason why that doctrine should not be applied consistently to other procedural incidents than service of process, and venue is one of such incidents. Certainly that promotes simplicity, and simplicity was one of the conveniences which induced the original change. Therefore in construing § 48, Jud. Code, 28 U.S.C.A. §109, in its application to an unincorporated association it seems inevitable that we should attribute an 'inhabitancy' to it as though it were a single jural person and not an aggregate."

Having determined that unincorporated associations should be regarded as jural entities for venue purposes,

Judge Hand turned next to the question of the location to be attributed to the entity. "It is not altogether clear a priori," he wrote, "how to attribute location to a collective venture even after one has called it a jural person" (*id.* at 411). However, just as corporations are regarded as being "present" wherever they are continuously carrying on a substantial part of their business, so too unincorporated associations should be deemed to be "present" in such circumstances. "That is a practicable test and it is really the only practicable test"[6] (*id.* at 411).

However, under the patent infringement venue statute, venue was limited to districts in which the defendant had an established place of business and in which acts of infringement occurred, or the district in which the defendant was an "inhabitant." To determine the "inhabitance" of unincorporated associations, Judge Hand continued his corporate analogy, concluding that inhabitance was limited to a single district, that of the principal place of business (*id.* at 411-412):

> "But that does not mean that the Association is an 'inhabitant' of all such places within the meaning of § 48, for it is clear that the section was passed to avoid precisely that result. Until its enactment a patentee could sue an infringer wherever he could catch him, and in the case of a corporation that meant wherever it was 'present' as determined by the test just mentioned. . . . [W]e may assume that [a corporation]

[6] "To say that [the association] exists wherever any of its members are is plainly untenable, for they all have their individual activities which are altogether alien to the enterprise. To say that the enterprise exists wherever and whenever any of the members think about it would be childish. There remains, so far as we can see, only what we have suggested; and we hold that the defendant Association was present wherever any substantial part of its activities were continuously carried on." 132 F.2d at 411.

> can be an 'inhabitant' only of the state of its incorporation, Neirbo Co. v. Bethlehem Shipbuilding Corporation, 308 U.S. 165 . . .; but even so, that will not serve as a test if there be several judicial districts in that state. Since a corporation can have no other activities than occupational, we are forced to choose among these; and it seems to us that we can only choose that place where its principal activities take place: its principal place of business. If so, the same test must apply to an unincorporated association with the added limitation that as to it no state of incorporation exists to disturb the test in application. For these reasons we think that if a patentee chooses to sue an unincorporated association under the doctrine of United Mine Workers v. Coronado Coal Co., supra, 259 U.S. 344 . . ., he must do so either at its principal place of business, or at any of the regular and established places of its business where it may have infringed."

Sperry Products involved the venue provision for patent infringement actions. However, the holding in *Sperry Products* turned upon application of the term "inhabitant" to unincorporated associations. Therefore, Judge Hand's analysis was equally applicable to the general venue statute in existence prior to the enactment of Section 1391 in 1948. That statute (28 U.S.C. § 112 (1940)) provided that "no civil suit shall be brought in any district court against any person . . . in any other district than that whereof he is an inhabitant. . . ." Consequently, in due course Judge Hand's analysis in the *Sperry Products* case was extended to the application of the general venue statute to unincorporated associations. *E.g., Brotherhood of Locomotive Firemen, etc.* v. *Graham,* 175 F.2d 802 (D.C. Cir. 1948), *rev'd on other grounds,* 338 U.S. 232.

Thus, the ground rules for determining venue for unin-

corporated associations were clearly laid out in advance of the enactment of Section 1391, the present general venue statute, in 1948. Those rules, established by *Sperry Products,* were (1) that for venue purposes unincorporated associations should be deemed entities which may have a residence—"inhabitance" was the term most used by the statutes then—and (2) that the residence should be determined by analogy to the law regarding corporations. The enactment of the redrafted general venue statute as Section 1391 in 1948 made no change that affected those basic rules—"residence" was substituted for "inhabitance" but the terms were intended to be synonymous.[7] In consequence, from the enactment of Section 1391 until the decision below, no court has challenged either of those two basic venue principles.

However, the enactment of Section 1391 did effect a change in the law which was relevant to venue of actions involving unincorporated associations. Section 1391(c) redefined corporate residence to abolish the earlier limitation to a single district and to substitute a multi-district residence based on "doing business." Section 1391(c) provides:

> "(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

Accordingly, the question arose whether the residence of unincorporated associations should continue to be determined by analogy to the superseded law regarding corpora-

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[7] See the Reviser's Note to Section 1391, H.R. Rep. No. 308, 80th Cong., 1st Sess., A147 (1947).

tions—*i.e.*, whether the residence of unincorporated associations was still limited to the single district of the association's principal place of business—or whether instead the analogy should be to the current law as to corporations—*i.e.*, whether unincorporated associations should be held, like corporations, to be residents of each district in which they are doing business. Nothing in Section 1391 changed the law as to unincorporated associations in so many words. Consequently, a few courts, relying on Judge Hand's ultimate result and ignoring the corporate analogy on which it rested, held that the principal place of business was still the only "residence" of an unincorporated association. *E.g., Griffin* v. *Illinois Cent. R. Co.*, 88 F.Supp. 552 (N.D. Ill. 1949); *Salvant* v. *Louisville & N.R.Co.*, 83 F.Supp. 391 (W.D. Ky. 1949); *Cherico* v. *Brotherhood of Railroad Trainmen*, 167 F.Supp. 635 (S.D. N.Y. 1958); see also *Brotherhood of Locomotive Firemen, etc.* v. *Graham, supra.*

However, the prevailing view was soon to the contrary —*i.e.*, because the residence of unincorporated associations should be determined by analogy to corporations, it was held that such associations should now be held to be resident wherever they are doing business. *Rutland* was the definitive decision (307 F.2d at 29-30):

> "Venue in the federal courts is not a jurisdictional concept. See 28 U.S.C. §1406 (b) (1958); H.R. Report 308, 80th Cong., 1st Sess. A154 (1947) (Reviser's Notes). We should not think about it in the metaphysical terms which have often been associated with considerations of jurisdiction. Venue is a concept of convenience. See Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 167-168 . . . ; Cohen v. Commodity Credit Corp., 172 F.Supp. 803 (W.D. Ark. 1959); Jacobson v. Indianapolis Power & Light Co., 163 F.Supp.

218 (N.D. Ind. 1958); The North River, 57 F.Supp. 808 (E.D.N.Y. 1944); Vogel v. Crown Cork & Seal Co., 36 F.Supp. 74 (D. Md. 1940). It should be treated in practical terms. See Sperry Prods., Inc. v. Ass'n of Am. R. R., supra; American Airlines v. Air Line Pilots Ass'n, [169 F.Supp. 777, 781 (S.D. N.Y. 1958)]. Congress has stated in § 1391(c) that the residence of a corporation for venue purposes is not only in the state wherein it is incorporated but also in the places where it is licensed to do business and where it is doing business. It is true that we would be reading into 28 U.S.C. § 1391(c) words which are not there if we should assert that that subsection states that it applies to unincorporated associations. See Cherico v. Brotherhood of R. R. Trainmen, supra. But we do not find any mainfestation here of a congressional policy of *expressio unius est exclusio alterius*, and so we follow the reasoning in Sperry Prods. and assimilate the residence of unincorporated associations under 28 U.S.C. § 1391(b) to that of corporations, 28 U.S.C. § 1391(c). Since the residence of a corporation for venue purposes has been expanded to include all the judicial districts in which the corporation is doing business, the residence of an unincorporated association for venue purposes should likewise be expanded to include all the judicial districts in which the unincorporated entity is doing business. We believe this accords with the practical requirements of litigation involving unincorporated associations. If an unincorporated union is carrying on sufficient activities in a particular judicial district so that it is deemed to be doing business there, it usually will suffer no undue hardship if required to stand suit there. If in certain instances the defense of a suit in a particular district

is peculiarly oppressive, the association may always seek a transfer of the action under 28 U.S.C. §1404 (a) (1958).[8]

Other cases in which the same conclusions were reached include *Portsmouth Baseball Corp.* v. *Frick*, 132 F. Supp. 922 (S.D. N.Y. 1955); *Eastern Motor Express* v. *Espenshade*, 138 F. Supp. 426 (E.D. Pa. 1956); *American Airlines* v. *Air Line Pilots Ass'n*, 169 F. Supp. 777, 780-783 (S.D. N.Y. 1958); *R & E Dental Supply Co.* v. *Ritter Co.*, 185 F. Supp. 812 (S.D. N.Y. 1959); *Chicago & N.W. Ry. Co.* v. *Brotherhood of Locomotive Eng.*, 202 F. Supp. 277 (S.D. Ia. 1962).[9]

In short, from *Sperry Products* until this case, the venue of unincorporated associations was deemed to depend on two unchallenged premises: (1) that for venue purposes such associations should be regarded as entities having a residence in their own right, and (2) that the residence should be determined, not by a new test fashioned for unincorporated associations alone, but by analogy to corporations, which associations tend to resemble. The only

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[8] The Second Circuit went on to hold that four railroad brotherhoods, one of which was the respondent Brotherhood of Railroad Trainmen, were doing business in and thus were residents of Vermont, and accordingly that venue was proper there. 307 F.2d at 30. As we understand it, it is not disputed that the Brotherhood in this case was doing business in the District of Colorado. The Colorado activities of the Brotherhood, like its Vermont activities in *Rutland*, include maintenance of a General Grievance Committee with headquarters at Denver, a strike by railroad employees against the Rio Grande in Colorado, and negotiations with the Rio Grande in Colorado (R. 92-93, 157-158).

[9] Analogously, because § 1391(c) provides that districts in which a corporation is doing business shall be regarded as the corporate residence "for venue purposes," courts have held that the statutory redefinition of corporate residence in the general venue statute is applicable to actions governed by earlier-enacted special venue statutes where the legislative history of the special provisions shows no conflicting Congressional purpose. *E.g.*, *Pure Oil Co.* v. *Suarez*, 384 U.S. 202 (1966).

uncertainty in this area of the law was whether, following statutory redefinition of corporate residence in 1948, the corporate analogy used in determining residence of unincorporated associations should be the pre-1948 corporate analogy or the current corporate analogy.

The decision below, by intruding the rule of *Steelworkers*, a diversity jurisdiction case, into the law of venue, strikes at the settled fundamentals of the law we have just described. *Steelworkers* had nothing to do with venue and the Court said nothing in its opinion about venue problems. Rather, the issue before the Court was "whether an unincorporated labor union is to be treated as a citizen *for purposes of federal diversity jurisdiction*, without regard to the citizenship of its members" (382 U.S. at 147) (emphasis added). The Court of Appeals, following a rule recognized since *Chapman* v. *Barney*, 129 U.S. 677 (1889), and recognized in the *Sperry Products* decision as the rule for purposes of subject matter jurisdiction (see p. 15, *supra*), had held that for diversity purposes an unincorporated association is still an aggregation of individuals and thus has the citizenship of each of its members. This Court affirmed, stressing the fact that if unincorporated associations were treated as entities for diversity purposes with a citizenship determined like that of a corporation, the diversity jurisdiction of the federal courts would be considerably expanded. The Court recognized the force of arguments advanced in support of a change in the rule of *Chapman* v. *Barney*, *supra:*

> "In recent years courts and commentators have reflected dissatisfaction with the rule of *Chapman* v. *Barney* [footnote omitted]. The distinction between the 'personality' and 'citizenship' of corporations and that of labor unions and other unincorporated associations, it is increasingly argued, has become artificial

and unreal. The mere fact that a corporation is endowed with a birth certificate is, they say, of no consequence. In truth and in fact, they point out, many voluntary associations and labor unions are indistinguishable from corporations in terms of the reality of function and structure, and to say that the latter are juridical persons and 'citizens' and the former are not is to base a distinction upon an inadequate and irrelevant difference. They assert, with considerable merit, that it is not good judicial administration, nor is it fair, to remit a labor union or other unincorporated association to vagaries of jurisdiction determined by the citizenship of its members and to disregard the fact that unions and associations may exist and have an identity and a local habitation of their own'' (382 U.S. at 149-150).

Nevertheless, the Court concluded that it should not itself expand the powers conferred on the Courts by Congress beyond theretofore settled boundaries. ''[T]hese arguments, however appealing, are addressed to an inappropriate forum, and . . . pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts'' (*id.* at 150-151).

There is nothing in that which has any relevance to venue. To hold that an unincorporated association is an aggregation of individuals for jurisdictional purposes is to avoid judicial expansion of the authority of the Courts conferred upon them by Congress pursuant to Article III of the Constitution—to avoid changing established boundaries of federal jurisdiction. On the other hand, to hold that an unincorporated association is an aggregation of individuals for venue purposes would be to overturn entirely venue doctrines that have been the law for the past

25 years. There is no reason why different rules should not exist in the two different areas of the law. The rules differ because the considerations which underlie them differ. "The jurisdiction of the federal courts—their power to adjudicate—is a grant of authority to them by Congress. . . . But the locality of a law suit—the place where judicial authority may be exercised—though defined by legislation relates to the convenience of litigants . . ."; thus, for example, jurisdiction is "beyond the scope of litigants to confer," but venue "is subject to their disposition." *Neirbo Co.* v. *Bethlehem Corp.*, 308 U.S. 165, 167-168 (1939). "Venue in the federal courts is not a jurisdictional concept. . . . We should not think about it in the metaphysical terms which have often been associated with considerations of jurisdiction. Venue is a concept of convenience." *Rutland Railway Corp.* v. *Brotherhood of Locomotive Engineers, supra,* 307 F.2d at 29. In short, the decision below, by extending the principles expressed in *Steelworkers* to the law of venue, would change established law as to venue, developed in response to considerations of convenience, on the strength of a decision that *refused* to change established law as to jurisdiction, developed in response to quite different considerations.

The inapplicability of *Steelworkers* to the determination of venue under the general venue statute is emphasized by the fact that the Court below, while purporting to be guided by *Steelworkers,* in actuality refused to follow the principles expressed in that decision. As we have shown, *Steelworkers* and similar decisions state that a union or other unincorporated association is not to be regarded as a jural entity and thus a "citizen" for diversity jurisdiction purposes, even though it has the capacity to sue and be sued in its own name, but is to be regarded as a mere aggregation of individuals each of whom is deemed to be a party to the lawsuit for purposes of determining whether diversity

exists. If a similar approach should be applied in determining the residence of "all defendants" under the general venue statute, venue with respect to the Brotherhood of Railroad Trainmen would not exist in any judicial district for purposes of this case. All members of the Brotherhood would be deemed to be "defendants" and since its members are scattered throughout 48 states, there would be no district in which "all defendants reside." All defendants would no more reside in the Northern District of Ohio, where the Brotherhood's headquarters are located, than in the District of Colorado; yet the Court below indicated that venue would exist in the Northern District of Ohio, not because that is where "all defendants reside" if the Brotherhood is not regarded as a jural entity, but because that is where its headquarters are located.

Indeed, if the diversity jurisdiction cases are examined in practical rather than conceptual terms, the consequences of applying the same principles under the general venue statute would be that a union or other unincorporated association resides in each judicial district in which one or more of its members resides. In cases such as *Steelworkers*, the union or association sues or is sued in its own name. Realistically, the citizenship of the union or association for purposes of diversity jurisdiction is in issue, not that of its members who are not in fact parties to the litigation. The citizenship of the members is material not because they are litigants, but because the true litigant—the union or association—is deemed to be a citizen of each state in which one or more of its members is a citizen. If this same practical approach is taken to the general venue statute, the Brotherhood of Railroad Trainmen "resides" in each judicial district in which one or more of its members resides, including the District of Colorado. Hence, "all defendants reside" in that district and venue was properly laid therein.

For reasons which we have already stated, we believe that *Steelworkers* and similar diversity jurisdiction decisions are irrelevant to the issue of venue. But if this Court is of a contrary view, we think the preferable and more defensible result would be to hold that the Brotherhood resides in each district in which one or more of its members resides. The Brotherhood, rather than its members (except those named as defendants), is the defendant in fact and should be regarded as the defendant for the purpose of determining where "all defendants reside." Moreover, the contrary approach would mean that for many years Congress did not provide for venue in any federal court of federal question litigation brought against any union or other unincorporated association which happened to have members residing in more than one judicial district. Congress could not have intended such an absurd result. But, however that may be, under no conceivable theory can it be said that the principles expressed in *Steelworkers* and similar cases support the conclusion that a union or association resides at the location of its general headquarters for purposes of the venue statute.

We submit, therefore, that *Steelworkers* lends no support to the determination below that the Brotherhood resides only at the location of its national headquarters, for purposes of the general venue statute, and does not reside in Colorado. Support for that determination can only be found in those few decisions, all of which antedate *Rutland*, applying by analogy the tests developed for corporations prior to 1948. For reasons advanced in the *Sperry Products* decision, we agree that the only sensible tests of residence are tests already developed for corporations, which large labor unions resemble in the extent and variety of their multi-state operations—indeed, it is hard to conceive of any reasonable alternative. And for the reasons advanced in the *Rutland* decision, we submit that the appro-

priate corporate analogy is to the law regarding corporations today, not to the law as it existed two decades ago. We show in the next section of this brief that the *Rutland* result, which permits suit wherever the unincorporated association is doing business, is the only sound result in terms of venue policy.

II. Sound Venue Policy Supports the Rutland Rule

The *Rutland* holding—that unincorporated associations reside wherever they do business rather than only at their principal office—is sound as a matter of venue policy. Like corporations, large labor unions conduct their business throughout the nation. Like corporations, their activities frequently injure others. The headquarters district of a large union may be far removed from the scene of those activities, from the participants in them, and from the persons injured by them. Consequently, in many cases in which union activities give rise to litigation, the district of the union's headquarters is an exceedingly inconvenient forum both for plaintiffs and for defendant unions. Venue rules that tend to restrict suit to the district of the union's headquarters serve only to insulate unions from local responsibility for their activities. In such circumstances, we submit, sound venue policy supports the *Rutland* rule. The manner in which the Brotherhood of Railroad Trainmen performs its representation function under the Railway Labor Act, in connection with the kinds of disputes which are most productive of railway labor litigation, illustrates the point.

The Brotherhood of Railroad Trainmen, like all other national railway labor organizations and (we suspect) like most national labor unions, consists of a national entity, the Grand Lodge, and numerous local ("subordinate") lodges on nearly all the carriers on which the Brotherhood

holds representation rights (Const. Sec. 1).[10] The Brotherhood's Constitution provides that the Grand Lodge "has exclusive jurisdiction over all the subjects pertaining to the Brotherhood," and that "its enactments and decisions upon all questions are the supreme law of the Brotherhood" (Const. Sec. 6). The Grand Lodge consists of a President, an Assistant to the President, fifteen Vice Presidents, eight alternate Vice Presidents, a number of other officials, and one delegate from each local lodge (Const. Sec. 2). The President presides at conventions of the Grand Lodge, performs "its executive duties when it is not in session," exercises "general supervision" over the Brotherhood's affairs, grants and signs charters of local lodges, is empowered to "adjust all grievances referred to him" by general grievance committees of subordinate lodges under the Brotherhood's General Rules, and has a variety of other miscellaneous duties (Const. Sec. 9). The Assistant to the President and the Vice Presidents assist the President in the discharge of these duties (Const. Sec. 10, 11).

Local lodges consist of at least ten members and are chartered by the President (Const. Sec. 75). Local lodges have jurisdiction assigned to them by the President over all members of the Brotherhood residing within their limits or employed on the system which they represent (Const. Sec. 79); in general, there is at least one local lodge on each railroad on which the Brotherhood holds representation rights and on large railroads there are a great many such lodges. Like the Grand Lodge, each local lodge has a set of officers headed by a President (Const. Sec. 81-82).

The Brotherhood—the national entity—is designated as the employees' representative under the Railway Labor Act. Under the Brotherhood's Constitution and General

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[10] The provisions of the Constitution and General Rules of the Brotherhood of Railroad Trainmen (1964), cited in this section of this brief, are set out in Appendix C, p. 49, *infra*.

Rules, the Brotherhood performs its representation function primarily through its local lodges and more specifically through grievance committees established by the local lodges (Const. Sec. 101; Gen. Rule Nos. 3-14). Each local lodge has a grievance committee—the local grievance committee (Const. Sec. 84; Gen. Rule No. 1(a)). Each local grievance committee consists of three members, a Chairman (the "Local" Chairman), a Vice Chairman and a Secretary (Gen. Rule No. 1(a)). The members of the Committee are elected by the lodge members they represent (Gen. Rule No. 1(a)). On each railroad on which there are more than three local lodges, there is also at least one general grievance committee consisting of the chairmen of the local grievance committees (Gen. Rule No. 2(a)). Each general grievance committee has a chairman—the "General Chairman"—elected either by the members of the committee or by referendum of the members of the Brotherhood within the jurisdiction of the committee (Gen. Rule No. 2(a)). In general, the local and general grievance committees act through their chairmen (Const. Sec. 101; Gen. Rule No. 4).

The manner in which the Brotherhood performs its representation function can best be described in terms of the principal kinds of disputes in railway labor relations: As in labor relations generally, the majority of railway labor disputes concern either the application of existing agreements, or the making of new agreements. These are the so-called "minor" and "major" disputes of the railway labor world. See generally *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-28 (1945).

Under the Railway Labor Act, "minor" disputes—"disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning

rates of pay, rules, or working conditions" (45 U.S.C. § 153 First (i))—are initially handled "on the property" on which they arise, in accordance with grievance procedures prescribed in the parties' contracts. If such disputes are not resolved at the level of "the chief operating officer of the carrier designated to handle such disputes," they may then be submitted either to the National Railroad Adjustment Board (45 U.S.C. § 153 First (i)) or to a special board of adjustment (45 U.S.C. § 153 Second). If a carrier declines to comply with an award of an adjustment board, the matter may be made the subject of enforcement proceedings in court (45 U.S.C. § 153 First (p)). Strikes over these disputes are unlawful at any stage and may be enjoined. *Trainmen* v. *Chicago, R. & I. R. Co.*, 353 U.S. 30 (1957); *Locomotive Engrs.* v. *L. & N. R. Co.*, 373 U.S. 33, 42 (1963).

Under the Railway Labor Act, "major" disputes—disputes concerning proposed changes "in agreements affecting rates of pay, rules, or working conditions" (45 U.S.C. § 156)—are initiated by service of a 30-day notice of intended change on the other party to the dispute (45 U.S.C. § 156). Thereafter, the parties must confer (45 U.S.C. § 156); and if the dispute is not settled, it is then subject successively to mediation by the National Mediation Board (45 U.S.C. § 155), a proffer of arbitration (45 U.S.C. §§ 155, 157-159), and possible consideration by a Presidential Emergency Board (45 U.S.C. § 160). Only after those procedures are exhausted may a union strike to compel a change in the agreement or may a railroad unilaterally change rules previously embodied in an agreement. Such self-help at any earlier stage is unlawful and may be enjoined. *Norfolk & P.B.L. R. Co.* v. *Brotherhood of Rail. Train.*, 248 F.2d 34, 45-46 (4th Cir. 1957) (alternative holding); *Pennsylvania Railroad Co.* v. *Transport Wkrs. Union,*

202 F. Supp. 134, 137 (E.D. Pa. 1962); *Western Air Lines* v. *Flight Engineers Internat'l Ass'n.*, 194 F. Supp. 908, 910-911 (S.D. Cal. 1961); *Pennsylvania Railroad Co.* v. *Transport Workers Union*, 191 F. Supp. 915, 921 (E.D. Pa. 1960), *aff'd*, 280 F.2d 343 (3d Cir. 1960); *Chicago, Rock Island & Pac. R. Co.* v. *Switchmen's Union*, 187 F. Supp. 581, 584 (W.D.N.Y. 1960), *rev'd on other grounds*, 292 F.2d 61 (2d Cir. 1961); *American Airlines* v. *Air Line Pilots Ass'n*, 169 F. Supp. 777, 783-789 (S.D.N.Y. 1958); see also dicta in *Eastern Air Lines, Inc.* v. *Flight Engineers Internat'l Ass'n.*, 340 F.2d 104, 106 (5th Cir. 1965); *Missouri-Illinois R. Co.* v. *Order of Railway Conductors*, 322 F.2d 793, 796 (8th Cir. 1963); *Pan American World Air.* v. *Flight Eng. Intern. Assoc.*, 306 F.2d 840, 846 (2d Cir. 1962); *Chicago River & Indiana R. Co.* v. *Brotherhood of Rail. T.*, 229 F.2d 926, 930-931 (7th Cir. 1956), *aff'd*, 353 U.S. 30.

The Brotherhood's Constitution and General Rules prescribe the manner in which the Brotherhood performs its representation function in connection with both "minor" and "major" disputes. With respect to "minor" disputes, in the absence of written notice to the contrary in individual cases, members of the Brotherhood grant "complete authority to the Brotherhood and any of its constituted representatives" to handle their claims and grievances against railroads as the Brotherhood's representatives see see fit (Gen. Rule No. 14). Individuals having claims and grievances against railroads are required to submit them to their local lodge (Gen. Rule No. 5). If the local lodge "sustains" the claim or grievance, the local grievance committee, ordinarily acting through the local chairman, presents the claim or grievance to appropriate railroad officials at the operating level (Gen. Rule No. 5; Const. Sec. 101). If a satisfactory adjustment of the dispute is not obtained in that fashion, the matter may then be referred to the

general grievance committee, which is required to investigate the matter and has the power to amend any part or all of any claim submitted to it (Gen. Rule Nos. 3, 5). If the general grievance committee undertakes to press the claim or grievance, it seeks adjustment of the dispute by the highest railroad official authorized to deal with such matters (Gen. Rule No. 3). If that proves unavailing, the General Chairman may then submit the matter to an adjustment board under the Section 3 of the Railway Labor Act, as General Chairman Carroll did with respect to the "minor" disputes out of which this case arose. Thus, in representing employees in connection with "minor" disputes, the Brotherhood's principal activities are primarily at the scene of such disputes—not in Cleveland, where the national union is headquartered.

With respect to "major" disputes, under the Brotherhood's Constitution and General Rules the Brotherhood likewise acts principally through its local officials except in cases handled in so-called "national movements" on a multi-employer basis.[11] The General Chairmen serve or are served with the initial Section 6 notices and are the union participants in the prescribed conferences and participate also in any mediation (Gen. Rule No. 3). However, if the general grievance committee fails to obtain a satisfactory disposition of the matter, the committee may request assistance from the President of the Brotherhood (Gen. Rule No. 12). In such cases, the President, or his representative (one of the Vice Presidents), meets with the general

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[11] Where substantially the same proposals are served by or upon a number of railroads at about the same time, and the dispute is not settled in the initial conferences on the individual properties, thereafter the negotiations are conducted on a multicarrier basis between national representatives of the union and carriers involved. See *Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 262 F.Supp. 177 (D.D.C. 1967) (appeal pending); *Kennedy* v. *Long Island R. Co.*, 211 F.Supp. 478, 488 (S.D.N.Y. 1962), *aff'd*, 319 F.2d 366 (2d Cir. 1963), *cert. denied*, 375 U.S. 830.

grievance committee and attempts to affect satisfactory disposition of the dispute (Gen. Rule No. 12). If a strike is deemed necessary it must be sanctioned both by the general grievance committee and the President (Gen. Rule No. 12). "In the event of a strike, the President of the Brotherhood shall be the recognized leader" (Gen. Rule No. 13) and strikes are financed by the national organization from a fund established for that purpose (Gen. Rule Nos. 18-23). Members who engage in strikes not authorized in the manner just described are subject to expulsion from the Brotherhood (Gen. Rule No. 15). Thus, the activities of the Brotherhood with respect to "major" disputes, except those which are a part of "national movements," are centered primarily at the scene of such disputes, rather than in Cleveland. But ultimate control—the authority to say when strikes may start and when they must stop—resides in the Brotherhood's President (Gen. Rule No. 12).

These "major" and "minor" disputes give rise to numerous law suits both by unions against railroads and by railroads against unions. It is suits of the latter variety with which we are concerned in this case. Suits by railroads against unions include, of course, suits to enjoin unlawful strikes over "minor" disputes (*e.g., Trainmen* v. *Chicago, R. & I. R. Co., supra; Locomotive Engrs.* v. *L. & N. R. Co., supra*), suits to enjoin unlawful premature strikes over "major" disputes (*e.g.*, cases cited at pp. 30-31, *supra*), and suits to recover damages for unlawful strikes —of which this case is an example.[12] Numerous actions are also instituted to resolve all manner of disputes as to

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[12] For authority for the recovery of damages for Railway Labor Act violations, see *Steele* v. *L. & N. R. Co.*, 323 U.S. 192, 207 (1944); *Brotherhood of Locomotive Firemen* v. *Tunstall*, 163 F.2d 289 (4th Cir. 1947), *cert. denied*, 332 U.S. 841; see also *Kennedy* v. *Long Island R. Co.*, 211 F.Supp. 478, 480 (S.D. N.Y. 1962), *aff'd*, 319 F.2d 366 (2d Cir. 1963), *cert. denied*, 375 U.S. 830. *Contra: Louisville & Nashville R. Co.* v. *Brown*, 252 F.2d 149 (5th Cir. 1958).

the procedures required by the Railway Labor Act with respect to particular controversies and the parties' statutory obligations with respect thereto.

As is evident from the foregoing description of the handling of the "major" and "minor" disputes under the Railway Labor Act and the Brotherhood's Constitution and General Rules, the principal activities on the part of both parties to a dispute which becomes the subject of litigation, often take place exclusively at the site of the particular railroad involved, and some of the relevant activities almost always are so located. That is the site of any injury which the Brotherhood's activities cause. Most of the principal participants and witnesses, both from the Brotherhood and for the railroad, often are located there. Similarly, the relevant records of both the Brotherhood and the railroad in many instances would be located only at the General Chairman's office and at the railroad's principal office, both of which are located in the vicinity of the railroad. That remains true even in the many cases in which the Brotherhood's President directs the activities which become the subject of litigation—as in the case of strikes.

In consequence, the district of the Brotherhood's national headquarters frequently would be a forum having relatively little connection with a dispute, and a trial in that district could be extremely burdensome and inconvenient. Not only would the relevant records and witnesses often be located at a great distance from that district, but an immense burden would be imposed upon the district court—litigation by *all* railroads against the Brotherhood would be concentrated in the single district where its national headquarters are located. These burdens and inconveniences could not be alleviated, moreover, by transfers under 28 U.S.C. § 1404(a), as cases may be transferred thereunder only to jurisdictions in which venue exists. *Hoffman* v. *Blaski*, 363 U.S. 335 (1960).

Accordingly, a rule which would tend to require trial of these cases at the district of the Brotherhood's national headquarters would be inconsistent with the fundamental purposes of venue legislation. Venue "relates to the convenience of litigants. . . ." *Neirbo Co.* v. *Bethlehem Corp., supra*, 308 U.S. at 168. "[C]ourts affix to conduct consequences as to place of suit consistent with the policy behind [venue legislation], which is 'to save defendants from inconveniences to which they might be subjected if they could be compelled to answer in any district, or wherever found.'" *Ibid.* Since trials of these suits against unions at the unions' headquarters district ordinarily would be equally inconvenient for both the railroads and the unions, there is no justification in fundamental venue policy for imposing rules which would tend to restrict venue to that district. Rather, the *Rutland* rule, which would permit trial wherever the union does business, would clearly be more "consistent with the policy behind" the venue statute.

Further, the imposition of rules which tend to restrict venue to the district in which national union headquarters are located—rules which cannot be justified in terms of the policy behind the venue statute—would have all the very serious disadvantages of the pre-1948 rule limiting the residence of corporations to a single district. Remedies should be available at the places where wrongs occur. That is true in all cases, if for no other reason than that increasing the cost of litigation inhibits the redress of injuries. And it is a matter of particular importance in cases involving unlawful strikes. In such cases, effective relief must be available immediately, or irreparable injury, both to the railroads and to the public they serve, would be the inevitable consequence. Ordinarily, immediate relief would be available only at the scene of a strike—not in Cleveland where there are no witnesses to it. See F.R.C.P. 65(b).

To be sure, railroads might seek relief locally against local Brotherhood officials, but to be fully effective relief must run against the real adversary, the Brotherhood itself. The President of the Brotherhood is the "leader" of any authorized strike and has authority to "sanction" and to "terminate" it (Gen. Rule No. 12), and only the Brotherhood, not its locals, is likely to be responsible financially. Thus, the price of a rule which would tend to restrict venue to the district of an association's principal place of business would be the "intolerable" price which led Congress in 1948, when it enacted Section 1391(c), to abrogate the similar rule regarding corporations:

> "The rationale of this sharp break with ancient formulae is quite obviously a response to a general conviction that it was 'intolerable if the traditional concepts of "residence" and "presence" kept a corporation from being sued wherever it was creating liabilities.'" *Pure Oil Co.* v. *Suarez,* 384 U.S. 202, 204 n. 3 (1966).[13]

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[13] "There is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district in question, transact a substantial amount of business there both before and after the event about which the plaintiff complains and at the time the suit is filed with the expressed intention to continue doing business in such locale, but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office is located. To do so would authorize it 'to run with the hare and hold with the hound.'

"In the doing of substantial business in an area a corporation becomes a part of the mainstream of commerce which affects the welfare of many people including those it may negligently injure. It receives the benefits which normally come to those engaged in business in the area. The right to choose to do substantial business in a particular locality does not have to be exercised. However, once the choice is made it would be unjust to permit the offending corporation to continue its operations, in the course of which it also may be creating liabilities, and at the same time to grant

Since a venue rule limiting the residence of an unincorporated association to the district of the association's principal place of business does not serve the purpose of the policy behind the venue statute, but instead is quite inconsistent with that policy, there is no reason whatever for exacting from those who have dealings with unions the "intolerable" price of such a rule. Since Congress has not provided an express statutory test for the residence of unincorporated associations, the courts must devise the test. It obviously is preferable to devise a test that serves the policy of venue legislation—the convenience of litigants—rather than a test that is inconsistent with that policy. *Rutland* and cases like it have devised a test which serves that policy; holding that an unincorporated association resides only at its principal place of business would not. In short, as Professor Moore has observed with respect to the holdings in *Rutland* and similar cases (1 Moore's Federal Practice (2d ed.), p. 1508):

> "The position taken by these courts is desirable and there is a built-in protection from abuse contained in 28 USC § 1404(a). Although 28 USC § 1391(c) does not on its face apply to unincorporated associations, where an unincorporated association carries on multistate activities, application of its principle is certainly justified."

We submit that labor unions should be held to reside wherever they are doing business.

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it complete immunity from those liabilities by shielding it with a carapace of technical venue construction. Usually the witnesses, the evidence, and all the facts leading to the ultimate inquiry as to the truth could be presented more effectively and with less inconvenience than would be possible at the residence or principal place of business of the corporation, often a substantial distance from the place of the wrong. Such a principle cuts two ways and may serve both plaintiff and defendant alike." *Pure Oil Co.* v. *Suarez*, 346 F.2d 890, 896-897 (5th Cir. 1965), *aff'd*, 384 U.S. 202.

Conclusion

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D. C. 20005

JAMES R. WOLFE
CHARLES I. HOPKINS, JR.
Union Station Building
Chicago, Illinois 60606
Attorneys for National Railway Labor Conference, Amicus Curiae.

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D. C. 20005
Of Counsel

APPENDIX A

Members of the National Railway Labor Conference

Class I Railroads

Akron, Canton & Youngstown
Ann Arbor
Atchison, Topeka & Santa Fe
Atlantic Coast Line
Baltimore and Ohio
Bangor and Aroostook
Bessemer and Lake Erie
Boston and Maine
Canadian Pacific Lines
Central of Georgia
Central RR of New Jersey
Central Vermont
Chesapeake and Ohio
Chicago & Eastern Illinois
Chicago & Illinois Midland
Chicago and North Western
Chicago, Burlington & Quincy
Chicago Great Western
Chicago, Milwaukee, St. Paul & Pacific
Chicago, Rock Island & Pacific
Clinchfield
Colorado and Southern
Delaware and Hudson
Denver and Rio Grande Western
Detroit and Toledo Shore Line
Detroit, Toledo and Ironton
Duluth, Missabe and Iron Range
Duluth, Winnipeg and Pacific
Elgin, Joliet and Eastern
Erie Lackawanna
Fort Worth and Denver
Georgia
Grand Trunk Western
Great Northern
Gulf, Mobile and Ohio

Illinois Central
Illinois Terminal
Kansas City Southern
Lake Superior & Ishpeming
Lehigh Valley
Long Island
Louisiana & Arkansas
Louisville & Nashville
Maine Central
Missouri-Kansas-Texas
Missouri Pacific
Monon
New York Central System
New York, New Haven and Hartford
Norfolk and Western
Norfolk Southern
Northern Pacific
Northwestern Pacific
Pennsylvania
Pennsylvania-Reading Seashore
Piedmont and Northern
Pittsburgh & Lake Erie
Reading
Richmond, Fredericksburg & Potomac
St. Louis-San Francisco
St. Louis Southwestern
Seaboard Air Lines
Soo Line
Southern Pacific
Southern Railway System
  Alabama Great Southern
  Cincinnati, New Orleans and Texas Pacific
  Georgia Southern & Florida
  New Orleans and Northeastern
Spokane, Portland and Seattle
Texas and Pacific
Toledo, Peoria & Western
Union Pacific
Western Maryland
Western Pacific

Class I Switching and Terminal Companies

Alton & Southern
Baltimore & Ohio Chicago Terminal
Belt Railway Company of Chicago
Boston Terminal
Chicago & Western Indiana
Chicago River & Indiana
Chicago Union Station
Cincinnati Union Terminal
Cleveland Union Terminals
Houston Belt & Terminal
Indiana Harbor Belt
Indianapolis Union
Kansas City Terminal
Kentucky & Indiana Terminal
Minnesota Transfer
Monongahela Connecting
Newburgh & South Shore
Ogden Union Railway & Depot
Portland Terminal
Portland Terminal Railroad
Port Terminal Railroad Association
Terminal R.R. Association of St. Louis
Union R.R. (Penna.)
Washington Terminal

APPENDIX B

Employee Representation on Selected Rail Carriers

as of June 30, 1965

From Table 10, Thirty-First Annual Report of the National Mediation Board, pp. 78-83

TABLE 10.—*Employee representation on selected rail carriers as of June 30, 1965*

Railroad	Engineers	Firemen and hostlers	Conductors	Brakeman, flagmen and baggagemen	Yard-foremen, helpers and switchtenders	Yard-masters	Clerical office, station, storehouse	Maintenance-of-way employees	Telegraphers	Dispatchers
Akron, Canton & Youngstown Ry	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Ann Arbor RR	BLF&E	BLF&E	BRT	BRT	BRT	ARSA	BRC	BMW	TCEU	ATDA.
Atchison, Topeka & Santa Fe Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Gulf, Colorado & Santa Fe Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	(1)	(1)	(1)	(1).
Panhandle & Santa Fe Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	(1)	(1)	(1)	(1).
Atlanta & West Point RR	BLE	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	ATDA.
Atlantic Coast Line RR	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Baltimore & Ohio RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Bangor & Aroostock RR	BLF&E	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	ATDA.
Bessmer & Lake Erie RR	BLF&E	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	X.
Boston & Maine RR	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Central of Georgia Ry	BLE	BLF&E	BRT	BRT	SUNA	RYA	BRC	BMW	TCEU	ATDA.
Central RR. of New Jersey	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Central Vermont Ry	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Chesapeake & Ohio Ry	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Chicago & Eastern Illinois RR	BLE	BLFPE	BRT	BRT	BRT	ARSA	BRC	BMW	TCEU	ATDA.
Chicago & Illinois Midland Ry	BLE	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	ATDA.
Chicago & North Western Ry	BLE	BLF&E	ORCB	BRT	BRT-ORCB.	RYA	BRC	BMW	TCEU	ATDA.
Chicago, Burlington & Quincy RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Chicago, Great Western Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Chicago, Milwaukee, St. Paul & Pacific RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Chicago, Rock Island & Pacific Ry	BLE	BLF&E	BRT	BRT	SUNA	RYA	BRC	BMW	TCEU	ATDA.
Clinchfield RR	BLE	BLF&E	ORCB	BRT	SUNA	RYA	BRC	BMW	TCEU	ATDA.
Colorado & Southern Ry	BLE	BLF&E	ORCB	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Colorado & Wyoming Ry	BLF&E	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	(1)	(1).
Delaware & Hudson RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Denver & Rio Grande Western RR	BLE	BLF&E	ORCB	BRT	SUNA	RYA	BRC	BMW-SMWIA.	TCEU	ATDA.
Detroit & Toledo Shore Line RR	BLF&E	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Detroit, Toledo & Ironton RR	BLE	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	ATDA.
Duluth, Missabe & Iron Range Ry	BLF&E	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Duluth, Winnipeg & Pacific Ry	BLF&E	BLF&E	BRT	BRT	BRT	X	BRC	BMW	TCEU	ORT.
Elgin, Joliet & Eastern	BLE	BLF&E	ORCB	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Erie Lackawanna RR	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Florida East Coast Ry	BLE	IARE-BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Fort Worth & Denver Ry	BLE	BLF&E	ORCB	BRT	SUNA	RYA	BRC	BMW	TCEU	ATDA.

Georgia & Florida RR	BLE	BLF&E	BRT	BRT	BRT	(1)	BRC	BMW	TCEU	ATDA.
Georgia RR., Lessee org	BLE	BLE	ORCB	BRT	BRT	ORCB	BRC	BMW	TCEU	ATDA.
Grand Trunk Western RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Great Northern Ry	BLE	BLF&E	ORCB	ORCB	SUNA	RYA	BRC	BMW	TCEU	(3).
Green Bay & Western RR	BLFE	BLF&E	BRT	BRT	BRT	(1)	BRC	BMW	TCEU	ATDA.
Gulf Mobile & Ohio RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	SA.
Illinois Central RR	BLE	BLF&E	ORCB	BRT	BRT	SA	BRC	BMW	TCEU	ATDA.
Illinois Terminal RR	BLF&E	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Kansas City Southern Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	(3).
Kansas, Oklahoma & Gulf Ry	BLF&E	BLF&E	ORCB	BRT	BRT	(3)	BRC	BMW	(3)	(3).
Lake Superior & Ishpeming RR	BLE	BLF&E	BRT	BRT	BRT	(3)	BRC	BMW	TCEU	ATDA.
Lehigh & Hudson River Ry	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	BRC	ATDA.
Lehigh & New England RR	BLF&E	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Lehigh Valley RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	LU.
Long Island RR	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Louisiana & Arkansas Ry	BLE	BLF&E-LU.	ORCB	BRT-LU.	BRT-LU.	RYA	BRC	BMW	TCEU	ATDA.
Louisville & Nashville RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Maine Central RR	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Midland Valley RR	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Mississippi Central RR	BLE	BLE	BRT	BRT	BRT	(1)	BRC	BMW	TCEU	ATDA.
Missouri-Kansas-Texas RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	(1)	(1).
Missouri-Kansas-Texas RR. of Texas	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1).
Missouri Pacific RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Monon RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Monongahela Ry	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Montour RR	BLE	BLF&E	BRT	BRT	BRT	(3)	BRC	BMW	(3)	(3).
Nevada Northern Ry	BLF&E	BLF&E	BRT	BRT	(3)	(3)	(3)	MMS	(3)	ATDA.
New York Central RR	BLE	BLE	BRT	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Ohio Central Lines	BLE	BLF&E	ORCB	BRT	BRT	RYNA	(1)	(1)	(1)	(1).
Cleveland, Cincinnati, Chicago & St. Louis Ry.	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Michigan Central RR	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ORT.
Boston & Albany RR	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
New York, Chicago & St. Louis RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
New York, New Haven & Hartford RR	BLE	BLF&E	BRT	BRT	BRT	SA	BRC	BMW	TCEU	ATDA.
New York, Susquehanna & Western RR	BLE	BLF&E	ORCB	BRT	BRT	BRT	BRC	BMW	TCEU	TCEU.
Norfolk & Western Ry	BLE	BLF&E	ORCB	BRT	BRT	(3)	BRC	BMW	TCEU	ATDA.
Norfolk Southern Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Northern Pacific Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Northwestern Pacific RR	BLE	BLF&E	BRT	BRT	ORCB-BRT.	(3)	BRC	BMW	TCEU	ATDA.
Pennsylvania RR	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Pennsylvania Reading Seashore Lines	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Pittsburgh & Lake Erie RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Pittsburgh & Shawmut RR	BLF&E	BLF&E	BRT	BRT	(3)	(3)	(3)	BMW	(3)	ATDA.
Pittsburgh & West Virginia Ry	BLE	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.

See footnote at end of table.

TABLE 10.—*Employee representation on selected rail carriers as of June 30, 1965*—Continued

Railroad	Engineers	Firemen and hostlers	Conductors	Brakeman, flagmen and baggagemen	Yardforemen, helpers and switchtenders	Yardmasters	Clerical office, station, storehouse	Maintenance-of-way employees	Telegraphers	Dispatchers
Reading Co	BLE	BLF&E	ORCB	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Richmond, Fredericksburg & Potomac RR	BLE	BLE	ORCB	ORCB	BRT	RYNA	BRC	BMW	TCEU	ATDA.
St. Louis-San Francisco Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
St. Louis Southwestern Ry	BLE	BLF&E	BRT	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
San Diego & Arizona Eastern Ry	BLE	BLE	ORCB	ORCB	BRT	(2)	BRC	BMW	TCEU	(2).
Seaboard Air Line RR	BLE	BLF&E	ORCB	BRT	BRT	RYNA	BRC	BMW	TCEU	ATDA.
Soo Line RR. Co	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Southern Pacific Co. (Pacific Lines)	BLE	BLF&E	ORCB	BRT	SUNA	RYNA	BRC	BMW	TCEU	ATDA.
Southern Pacific Co. (Texas and Louisiana Lines)	BLE	BLF&E	BRT	BRT	SUNA	BRT	BRC	BMW	TCEU	ATDA.
Southern Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Georgia, Southern Florida Ry	BLF&E	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Cincinnati, New Orleans & Texas Pacific Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	(1)	(1)	TCEU	(1).
New Orleans & Northeastern RR	BLE	BLF&E	ORCB	BRT	SUNA	RYA	(1)	(1)	(1)	(1).
Alabama Great Southern Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	(1)	(1)	(1)	(1).
Spokane International RR	BLF&E	BLF&E	ORCB	ORCB	SUNA	RYA	BRC	BMW	TCEU	LU.
Spokane, Portland & Seattle Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Staten Island Rapid Transit Ry	BLE	BLE	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Tennessee Central Ry	BLE	BLF&E	ORCB	BRT	BRT	BRT	BRC	BMW	TCEU	ATDA.
Texas & Pacific Ry	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Texas Mexican Ry	BLE	BLF&E	BRT	BRT	BRT	(2)	BRC	BMW	(2)	(2).
Toledo, Peoria & Western RR	BLF&E	BLF&E	BRT	BRT	BRT	(2)	BRC	BMW	TCEU	(2).
Union Pacific RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Utah Ry	BLE	BLE	ORCB	ORCB	BRT	(2)	(2)	BMW	TCEU	ATDA.
Wabash RR	BLE	BLF&E	ORCB	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Western Maryland Ry	BLF&E	BLF&E	BRT	BRT	BRT	RYA	BRC	BMW	TCEU	ATDA.
Western Pacific RR	BLE	BLF&E	ORCB	BRT	SUNA	RYA	BRC	BMW	TCEU	ATDA.

TABLE 10.—*Employee representation on selected rail carriers as of June 30, 1965*—Continued

Railroad	Machinists	Boiler-makers, black-smiths	Sheet metal workers	Electrical workers	Carmen, coach cleaners	Power house employees, shop laborers	Signalmen	Mechanical foremen, supervisors	Dining-car stewards	Dining-car cooks and waiters
Akron, Canton & Youngstown Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Ann Arbor R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Atchison, Topeka & Santa Fe Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Gulf, Colorado & Sante Fe Ry	(1)	(1)	(1)	(1)	(1)	(1)	(1)		(2)	(2).
Panhandle & Santa Fe Ry	(1)	(1)	(1)	(1)	(1)	(1)	(1)		(2)	(2).
Atlanta & West Point R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Atlantic Coast Line R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	RED	BRT	UTSE.
Baltimore & Ohio R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	HRE.
Bangor & Aroostock R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Bessemer & Lake Erie R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	SA	UTSE.
Boston & Maine R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(4)	(2)	UTSE.
Central of Georgia Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	RED	(2)	(2).
Central R.R. of New Jersey	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Central Vermont Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT-HRE.	HRE.
Chesapeake & Ohio Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE
Chicago & Eastern Illinois R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Chicago & Illinois Midland Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	ORCB	HRE.
Chicago & North Western Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	BSCP.
Chicago, Burlington & Quincy R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Chicago Great Western Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(1)	BRT	HRE.
Chicago, Milwaukee, St. Paul & Pacific R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Chicago, Rock Island & Pacific Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	ORCB.
Clinchfield R.R	IAM	BB	SMWIA	IBEW	BRCA	BMW	BRS	ARSA	BRT	BSCP.
Colorado & Southern Ry	IAM	BB	SMWIA	(2)	BRCA	IBFO	(2)		(2)	(2).
Colorado & Wyoming Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Delaware & Hudson R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	SA.
Denver & Rio Grande Western R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Detroit & Toledo Shore Line R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Detroit, Toledo & Ironton R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	IBEW		(2)	(2).
Duluth, Missabe & Iron Range Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Duluth, Winnepeg & Pacific Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Elgin, Joliet & Eastern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(3)	(2)	HRE.
Erie-Lackawanna R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(3).
Florida East Coast Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	LU	BRT	BSCP.
Fort Worth & Denver Ry	IAM	BB	SMWIA	(2)	BRCA	(2)	(2)		(2)	(2).
Georgia & Florida R.R	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Georgia R.R., Lessee org	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Grand Trunk Western RR										

Great Northern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(1)	BRT	HRE-ORCB.
Green Bay & Western RR	IAM	BB	SMWIA	(2)	BRCA	BMW	BRS		(2)	(2).
Gulf Mobile & Ohio RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	LU	HRE.
Illinois Central RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Illinois Terminal RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	IBEW	ARSA	(2)	(2).
Kansas City Southern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	HRE.
Kansas, Oklahoma & Gulf Ry	(2)	(2)	(2)	(2)	BRCA	IBFO	(2)		(2)	(2).
Lake Superior & Ishpeming	SA	SA	SA	(2)	SA	IBFO	(2)		(2)	(2).
Lehigh & Hudson River Ry	IAM	BB	(2)	(2)	BRCA	IBFO	BRS		(2)	(2).
Lehigh & New England RR	IAM	BB	SMWIA	IBEW	BRCA	(2)	(2)		(2)	(2).
Lehigh Valley RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	RED	BRT	HRE.
Long Island Railroad	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	(2).
Louisiana & Arkansas Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	RED	(2)	(2).
Louisville & Nashville RR	IAM	BB/URRWA.	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Maine Central RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Midland Valley RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	IBEW		(2)	(2).
Mississippi Central RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	(2)		(2)	(2).
Missouri-Kansas-Texas RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Missouri-Kansas-Texas RR. of Texas	(1)	(1)	(1)	(1)	(1)	(1)	(1)		(1)	(1).
Missouri Pacific RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Monon RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Monongahela Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Montour RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	(2)		(2)	(2).
Nevada Northern Ry	X	SA	SA	(2)	MMS	SA	(2)		(2)	(2).
New York Central RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	ARSA	HRE.
Ohio Central Lines	(1)	(1)	(1)	(1)	(1)	(1)	BRS	ARSA	ARSA	(1).
Cleveland, Cincinnati, Chicago & St. Louis Ry.	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	ARSA	(1).
Michigan Central RR	(1)	(1)	(1)	(1)	(1)	IBFO	BRS	ARSA	ARSA	(1).
Boston & Albany RR	(1)	(1)	(1)	(1)	(1)	IBFO	BRS	ARSA	ARSA	(1).
New York, Chicago & St. Louis RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(2)	HRE.
New York, New Haven & Hartford	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
New York, Susquehanna & Western RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Norfolk & Western Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Norfolk Southern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(2)	(2).
Northern Pacific Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(1)	BRT	ORCB-HRE.
Northwestern Pacific RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	(1)	ARSA	(2)	(2)
Pennsylvania RR	IAM	URRWA/BB.	SMWAI	URRWA	URRWA	URRWA	BRS	SA	BRT	DC&RR FWU.

See footnotes at end of table.

TABLE 10.—*Employee representation on selected rail carriers as of June 30, 1965*—Continued

Railroad	Machinists	Boiler-makers, black-smiths	Sheet metal workers	Electrical workers	Carmen, coach cleaners	Power house employees, shop laborers	Signalmen	Mechanical foremen, supervisors	Dining-car stewards	Dining-car cooks and waiters
Pennsylvania Reading Seashore Ln	IAM	(3)	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3)
Pittsburgh & Lake Erie RR	IAM	BB	SMWIA	IBEW	URRWA	IBFO	UMW	ARSA	(3)	(3).
Pittsburgh & Shawmut RR	URRWA	URRWA	(3)	URRWA	URRWA	URRWA	(3)		(3)	(3).
Pittsburgh & West Virginia Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3).
Reading Co	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3).
Richmond, Fredericksburg & Potomac RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	RED	BRT	HRE.
St. Louis-San Francisco Ry	IAM	BB/IBEW.	SMWIA	IBEW	BRCA	IBFO	BRS	(1)	BRT	HRE.
St. Louis Southwestern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(1).
San Diego & Arizona Eastern Ry	IAM	BB	SMWIA	IBEW	BRCA	(3)	(3)		BRT	HRE.
Seaboard Air Line RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Soo Line RR. Co	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	(3)	HRE.
Southern Pacific Co. (Pacific Lines)	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	L.U	BRT	HRE.
Southern Pacific Co. (Texas and Louisiana Lines)	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.
Southern Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	UTSE.
Georgia, Southern & Florida	(1)	(1)	(1)	(1)	(1)	(1)	(1)	ARSA	(3)	(3).
Cincinnati, New Orleans & Texas Pacific Ry	(1)	(1)	(1)	(1)	(1)	(1)	(1)	ARSA	(3)	(3).
New Orleans & Northeastern RR	(1)	(1)	(1)	(1)	(1)	(1)	(1)	ASRA	(3)	(3).
Alabama Great Southern Ry	(1)	(1)	(1)	(1)	(1)	(1)	(1)	ARSA	(3)	(3).
Spokane International RR	IAM	BB	(3)	(3)	BRCA	IBFO	(3)		(3)	(3).
Spokane Portland & Seattle Ry	SA	SA	SA	SA	SA	IBFO	BRS	(1)	BRT	HRE.
Staten Island Rapid Transit Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3).
Tennessee Central Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	(3)	RED	(3)	(3).
Texas & Pacific Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	(1)	BRT	HRE.
Texas Mexican Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	(3)		(3)	(3).
Toledo, Peoria & Western RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3).
Union Pacific RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	L.U	BRT	HRE.
Utah Ry	SA	SA	(3)	SA	SA	(3)	(3)		(3)	(3).
Wabash RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		BRT	HRE.
Western Maryland Ry	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS		(3)	(3).
Western Pacific RR	IAM	BB	SMWIA	IBEW	BRCA	IBFO	BRS	ARSA	BRT	HRE.

[1] Included in System Agreement.
[2] Employees in this craft or class but not covered by agreement.
[3] Carriers report no employees in this craft or class.
[4] Employees represented by W. W. Jordan, an individual.

APPENDIX C

Excerpts from Constitution and General Rules of the Brotherhood of Railroad Trainmen

Effective January 1, 1965

Constitution

Name.

Sec. 1. This organization shall be known as the "Brotherhood of Railroad Trainmen" and shall consist of one Grand Lodge and subordinate lodges.

Officers and Members of the Grand Lodge.

Sec. 2 (a). The Grand Lodge shall consist of a President; and Assistant to the President; fifteen Vice Presidents; eight Alternate Vice Presidents; a General Secretary and Treasurer; an Assistant General Secretary and Treasurer; a National Legislative Representative; an Alternate National Legislative Representative; a Canadian Legislative Representative; an Alternate Canadian Legislative Representative; a Board of Directors consisting of the President, Assistant to the President, four Senior United States Vice Presidents, Senior Canadian Vice President, General Secretary and Treasurer, National Legislative Representative, Canadian Legislative Representative and Chairman of the Board of Trustees and Insurance; an Individual Reserve Board consisting of the President, Assistant to the President and General Secretary and Treasurer; a Board of Trustees and Insurance consisting of three members, one of whom shall be a Canadian; an Alternate to the Board of Trustees and Insurance; an Executive Board consisting of five members, one of whom shall be a Canadian; an Alternate to the Executive Board; a Board of Appeals consisting of seven members; four Alternates to the Board of Appeals, one of whom will be selected from each of the territories, Eastern, Western, Southern and Canadian; and one delegate from each subordinate lodge

who must be a member of the Brotherhood of Railroad Trainmen Insurance Department and must have been so continuously for at least one year.

(b). [Omitted]

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Jurisdiction and Authority.

Sec. 6. The Grand Lodge has exclusive jurisdiction over all subjects pertaining to the Brotherhood. Its enactments and decisions upon all questions are the supreme law of the Brotherhood, consistent with Federal, State and Provincial laws.

• • • •

Duties of the President.

Sec. 9. The President shall devote his whole time to the interests of the Brotherhood. He shall preside at all conventions of the Grand Lodge and shall perform its executive duties when it is not in session. He shall exercise general supervision over the affairs of the Brotherhood. He may call a special convention of the Grand Lodge at any time, and shall do so upon request of a majority of the lodges as provided in Section 24.

He shall adjust all grievances referred to him, interpret all laws of the Brotherhood, and decide all controversies and appeals referred to him by subordinate lodges or members; in all things acting in conformity with this constitution.

He shall be jointly responsible, with the General Secretary and Treasurer, for the disbursement of all funds of the Brotherhood. He shall be bonded in the sum of $500,000, subject to the approval of the Board of Trustees and Insurance, and payable to the Brotherhood and/or the Insurance Department.

He shall organize all subordinate lodges and may call lodge meetings and preside at them.

He shall not suspend or remove any subordinate lodge officer or committee or board member unless they have been charged with a violation of the constitution or of their obligation, and have had a fair trial in their own lodge.

Duties of Assistant to the President.

Sec. 10. The Assistant to the President shall devote his whole time to the interests of the Brotherhood. He shall assist the President in his duties as presiding officer at conventions of the Grand Lodge and shall perform such other duties as may be assigned by the President.

In case of the death, resignation, or removal of the President, the Assistant to the President shall then become President.

Duties of the Vice Presidents.

Sec. 11. Vice Presidents shall devote their whole time to the interests of the Brotherhood and shall perform such duties as may be assigned to them by the President. They shall submit annually a detailed report of their activities.

* * * *

Name.

Sec. 75. A subordinate lodge shall consist of at least ten dues paying members and shall be known as——Lodge. No. —— of the Brotherhood of Railroad Trainmen, holding a charter granted by the President of the Brotherhood. The charter of a lodge cannot be voluntarily surrendered as long as ten dues paying members in good standing object thereto.

* * * *

Jurisdiction and Authority.

Sec. 79. The jurisdiction of the lodge shall be that assigned to it by the President of the Brotherhood. It shall have jurisdiction over all members of the Brotherhood residing within its limits or employed on the system which it represents. Its decisions on all matters within the authority of subordinate lodges shall be final unless appealed to and reversed by the President of the Brotherhood. It may punish members for misconduct and viola-

tion of obligation, and may summon witnesses and provide penalties for their non-attendance.

* * * * * *

Elective Officers.

Sec. 81. The elective officers shall be: a president, a vice president, a secretary and a treasurer. A lodge having a membership of fifty or more members, may create the office of collector, after applying to the President of the Brotherhood and receiving a dispensation to this effect. Upon application, the President may issue dispensations to subordinate lodges permitting them to combine the offices of secretary and treasurer. No member may fill two elective offices at the same time, with this exception, but this shall not prevent his serving as Delegate, legislative representative, or on committees. The most recent former president of a lodge shall have the title of past president.

Appointive Officers.

Sec. 82. The appointive officers shall consist of a conductor, chaplain, warden, inner and outer guard, who shall be appointed by the president-elect previous to his installation. The appointive officers shall be installed with the elective officers.

* * * * *

Duties of the Grievance Committee.

Sec. 101. The local grievance committee shall adjust all grievances that may be referred to it by the lodge, under provisions of General Rule No. 5. The local chairman shall investigate and adjust all schedule rule violations brought to his attention, and where time has not been claimed for schedule violation, the local chairman may make time claims for such violations of schedule, reporting his action at the next lodge meeting. Local chairmen shall not be required to handle grievances arising as a result of minor personal injuries beyond the time lost and expenses incurred.

* * * * *

General Rules

Local Grievance Committees.

No. 1 (a). All subordinate lodges shall elect local grievance committees for each division or system represented in the lodge by five or more members. The committee shall consist of a chairman, who has attended at least three meetings each year during the three years preceding the year of election, and three meetings in the year in which the election is held; a vice chairman and secretary, to be elected from among and by the members in actual service on the division or system which the committee is to represent.

When nominations and elections are held at one meeting, they shall be held separately and the nomination and election of chairman shall be first, then the vice chairman and the secretary. When nominations are held at a meeting prior to the election meeting, the nominations shall be held separately and in the same order. When the referendum is in effect, nominations at the meeting designated for that purpose shall be in the same order and the nominees shall appear on the ballot in that order.

No member who holds an official or semi-official position, temporary or permanent, or who is a member of another railroad labor organization as defined in Section 85 shall be eligible to serve on a grievance committee. Where the Brotherhood has a contract for yardmasters, and a yardmaster or assistant yardmaster is elected to a committee, he shall represent yardmasters and assistant yardmasters only.

The lodge secretary shall notify the General Secretary and Treasurer of the election of grievance committeemen. Upon application to the President of the Brotherhood, under lodge seal, a dispensation may be issued to add one or more members to the local committee, or to create additional local committees, whose duties and authority shall be clearly defined in the dispensation.

A lodge may pay its local chairman a specified salary, which shall be drawn from a fund collected from members in the service he represents.

A local grievance committeeman who is discharged or suspended from the service of a carrier, and who is otherwise eligible, will continue in his office as long as desired by the membership under the jurisdiction of the committee.

The lodge may approve and order paid any legitimate bill for service rendered or time lost by the local committeeman, when the bill is approved in writing by the local chairman and at least four members under the jurisdiction of the committee, and presented at a regular meeting.

Yardmasters obtaining leaves of absence from such positions may serve on local committees. All committees should endeavor to provide in contracts for a leave of absence rule for yardmasters serving on committees, in order to protect their promotional rights.

General Grievance Committees.

No. 2 (a). Every line or system shall have a General Grievance Committee, to be formed in January following the quadrennial election of local grievance committees. The General Grievance Committee shall consist of the chairmen of local grievance committees. Chairmen employed as yardmasters and representing yardmasters only may be members of the General Committee when that committee and the President of the Brotherhood approve.

The date and place of organization shall be fixed by the retiring chairman of the General Grievance Committee. In the event of his failure to fix the date for convening, the date and place of meeting shall be fixed by the President of the Brotherhood, upon application of one or more lodges on the system.

If fewer than 3 lodges are located on a line, the chairman and secretary of each local committee shall, when necessary, assume the authority and perform the duties of a General Grievance Committee.

If a lodge petitions the chairman and secretary of the General Grievance Committee, those officers shall, within ten days, submit the request to convene the General Grievance Committee to all lodges under its jurisdiction, the lodge making the petition furnishing a copy to all lodges.

Lodges shall approve or disapprove the petition within 30 days. If a majority of the lodges concur in the request, the chairman and secretary shall convene the General Committee within 30 days. If one-fourth of the lodges so request, the General Committee shall be convened at least once every 2 years.

When a local grievance committee chairman is unable to attend a meeting of the General Committee, or if the local chairman is the General Chairman, the vacancy shall be filled by the vice chairman of the local committee, but he shall not be eligible for election as an officer of the General Committee, except the chairmanship as provided in General Rule 2 (b).

Each chairman of a local grievance committee shall have a credential, signed by the president and secretary of his lodge and with the lodge seal, which shall be his authority to be seated as a member of the General Grievance Committee; however, the General Grievance Committee is the judge of the qualifications of a member to sit on the committee.

(b). The officers of a General Grievance Committee shall be elected on the final day of the quadrennial formation, except the chairman who may have already been elected by referendum, and shall consist of a chairman, vice chairman and secretary, whose term of office shall be four years, or until their successors have qualified.

To be eligible for election as chairman of a General Grievance Committee, a member shall have served at least four years as chairman of a local grievance committee. No member shall be eligible to be elected as an officer of a General Grievance Committee who has reached the age of sixty-five or during the calendar year in which he attains such age. Retirement shall be compulsory for all General Grievance Committee officers on the last day of the calendar year in which they attain age sixty-five.

A General Grievance Committee may elect as its chairman a brother who is not a member of the committee; provided that he holds seniority in service under the jurisdiction of the Committee, and is otherwise eligible. A chairman thus elected shall have all the authority given to chairmen

of General Grievance Committees under the General Rules, except that in sessions of the Committee he shall not vote, although he may speak. Otherwise, he shall have and assume all rights and powers vested in the chairman of a general grievance committee under the General Rules.

If a vacancy occurs in the office of chairman, it shall be filled by the vice chairman until the election of another chairman is held, in accordance with the election rules of that system. The secretary shall immediately notify the President of the Brotherhood of a vacancy in the office of chairman. The President shall call an election within 30 days of such notice. If a vacancy occurs in the office of vice chairman or secretary, the General Grievance Committee shall fill such vacancy. Elections to fill vacancies shall be by majority vote of the local chairmen and shall be by secret referendum after at least 15 days notice by mail, at the last known home address (mail notice not required in Canada), or in General Committee session. When referendum elections are provided for general chairmen, elections to fill a vacancy in that office shall conform to General Rule 2 (e).

When election is held by referendum, each candidate shall have ten days to accept or decline nomination before the ballot is printed.

The general chairman, with the approval of the General Committee, and the President of the Brotherhood, may select assistants for General Committee offices. A member of the Committee who fails to attend a meeting, after notification, shall, unless excused, be expelled from the Brotherhood after not less than 15 days written notice of specific charges, fair hearing, and conviction.

A general chairman who is discharged or suspended from service of a carrier shall continue in his office and is eligible to hold office as long as desired by the membership under jurisdiction of the General Committee. A General Committee requiring the full-time services of the vice chairman and/or secretary may re-elect these officers, providing they hold seniority in service, without their being re-elected as local chairmen. When so re-elected, these officers may speak but shall have no vote in the General Committee.

The President may grant dispensation for the establish-

ment and maintenance of separate General Grievance Committees for road and yard on railroads in Canada represented by the Brotherhood. Each class of service represented by a separate General Grievance Committee shall, by assessment, maintain themselves and shall determine whether separate salaried general chairmen will be maintained in accordance with this General Rule.

[Paragraphs (c) through (f) of General Rule No. 2, relating to referenda, omitted.]

Duties of General Grievance Committee.

No. 3. Each General Grievance Committee shall investigate all matters lawfully before it. It may amend any part or all of any complaint or claim submitted to the committee. There shall be a limitation of two years in connection with the handling of any cases of uncontested seniority (applicable only to cases involving position and seniority rank on seniority rosters). No case for reinstatement shall be accepted for handling by local lodge or local or general committees, after the expiration of two years from date of dismissal, except where otherwise provided by schedule rules.

After the Committee has decided on the justness of any claim or complaint, it shall make an effort to adjust the same with the general officers of the carrier in accordance with General Rule No. 10. General chairmen shall handle with the carrier, any claim or grievance that has been appealed to the General Committee; provided a limitation agreement exists on the property and the general chairman shall try to reach agreement with the management to extend the time limit. A General Grievance Committee or its subcommittee, or an officer representing the Grand Lodge assisting a General Committee, shall not negotiate an agreement with a carrier involving the changing of recognized home and other terminals in either pool or assigned freight or passenger service, or the reassignment of crews in connection therewith, without first holding a referendum for all members who hold seniority rights and are paying general grievance committee assessments, on each seniority

district, division or subdivision affected, with a majority vote to decide the issue. The referendum shall proceed as provided in this Rule and in Section 85 (b).

Nothing contained in this rule shall, in any way, change standard rules which were made a part of the working agreements on the various railroads prior to the enactment of this Rule by the twenty-ninth convention. A General Grievance Committee or an officer representing the Grand Lodge assisting a General Committee shall not revise or change a general or system wage schedule or agreement, unless authorized to do so by a majority vote of the lodges on the system or by a majority of votes in a referendum of the members on the system who hold seniority rights in the class or grade of service affected, such referendum to be conducted in the following manner.

The secretary of the General Grievance Committee shall prepare a ballot which shall set forth the proposed changes and shall provide a blank space after each proposition, in which the member shall record his vote. The ballot shall also provide a place for the signature and address of the member and shall specify the date by which the ballot must be returned to the lodge secretary. The secretary of the General Grievance Committee shall furnish sufficient ballots and stamped envelopes to the lodge secretary to provide for each member entitled to vote. Each member shall make a mark, in the space provided, indicating his wishes, write (not print) his signature and address in the space provided on the ballot and mail to the designated post office box. The member's signature shall be checked against the register of the lodge at the time ballots are canvassed. The provisions of Section 85 (b) relative to obtaining the post office box shall be followed.

The lodge secretary shall report the result to the secretary of the General Grievance Committee and to the other lodges affected. The secretary of the General Committee shall prepare a recapitulation of the results of the voting and furnish this to the President of the Brotherhood with copies to each of the affected lodges.

The Committee may, when authorized to do so, make and enter into contracts of agreement, consistent with the law and policy of the Brotherhood, with the railroad or bus

line whose employes it represents, concerning rates of pay and working conditions; provided, however, that a standard rule shall not be amended without the permission of the President. Yard work and road work are two separate and distinct classes of service and the President, General Committees and officers assigned to assist General Committees shall maintain a line of demarcation between yard and road service so that employes of one class of service shall not encroach upon the rights of employes of the other class of service. This provision shall be mandatory only where the Brotherhood holds the contract for yard and road service. If a condition occurs where, in the judgment of the General Committee, the line of demarcation cannot be determined, the Committee shall prepare a statement of the facts of the controversy, together with its recommendation and furnish this to the President who shall advise the General Committee of his decision.

Any officer or member of a General Grievance Committee may be removed for cause by a majority vote of the Committee; provided that notice, in writing, of charges shall be submitted to him at least 30 days before a hearing. If the Committee is not in session, a copy of the charges shall be forwarded to the President of the Brotherhood, who will determine whether the charges warrant convening the General Grievance Committee to try the accused.

Should the President of the Brotherhood desire to prefer charges against any officer or member of a General Grievance Committee, the charges shall be made in writing and be served upon the accused at least 30 days prior to the date set for the trial. The trial shall be held in the city where the General Committee maintains its headquarters or where the accused resides. The accused may be represented at the trial by counsel, who shall be a member of the Brotherhood.

Duties of Chairman and Secretary of General Grievance Committee.

No. 4. The chairman of a general grievance committee shall be its executive head, and see that the laws and rules of the Brotherhood are observed. When it will not interfere with his other duties, he shall organize lodges and audit

the accounts of lodges and perform other work as directed by the President of the Brotherhood, his expenses being paid by the Brotherhood. On systems having a salaried chairman, such salary and expenses shall be credited to the system on which the work is performed. In his absence, or inability to act, the vice chairman shall act as chairman, and if the office of chairman becomes vacant, it shall be filled as provided in General Rule No. 2.

The general chairman shall visit all lodges under his jurisdiction at least once during his term. He shall make a quarterly report, in writing, showing his daily activities, and shall include therein a quarterly report of the receipts and disbursements in the general committee fund for his system, giving itemized statement of disbursements, which shall be furnished him by the General Secretary and Treasurer in sufficient copies for distribution with his report. A copy of these reports shall be sent to each lodge under his jurisdiction and to the President of the Brotherhood.

The general chairman shall make a quarterly report, in writing, showing all claims pending and unsettled at the end of the quarter and all claims settled or disposed of during the quarter. Copies of this report shall be furnished to the President of the Brotherhood and to each lodge and local chairman within the jurisdiction. Copies of special agreements and rulings negotiated by general chairmen and/or general committees shall be furnished each lodge for members affected in the territory under the jurisdiction of the general committee. The chairman shall furnish each member under his jurisdiction who is affected by a national or system agreement, with a copy of that agreement. In the event of failure to make such report, to all lodges and the President, salary checks shall be withheld until the quarterly report has been issued.

The secretary shall keep an accurate record of the proceedings of the committee; issue notices of its meetings; shall have charge of the books and records of the committee; shall furnish to the President of the Brotherhood a copy of all schedules of rules and rates of pay agreed to by the committee and make a report of all grievances disposed of. At the close of each meeting of the general grievance committee, he shall send a copy of the minutes to each lodge

on the system. After the quadrennial election of officers of a general grievance committee, the secretary shall notify the President of the Brotherhood of their names and addresses and shall also notify him of any changes in the officers of the committee during the term of office.

Consideration of Grievances.

No. 5. Any member claiming a grievance shall make a statement of the grievance, in writing, containing all of the material facts necessary for a clear understanding of the grievance, and present or mail it to the lodge secretary for consideration at the next regular meeting. The lodge shall then determine, by majority vote of the members present, employes of the division, who hold seniority rights in the class or grade of service involved, whether to sustain the grievance.

If the grievance is sustained, the lodge shall then authorize either the local chairman or the local grievance committee to bring the matter before the trainmaster, superintendent, or other proper person, and use every means to effect a satisfactory settlement, and to report action and all things pertaining to the case to the lodge. If the result is not satisfactory, it may be referred to the general grievance committee for further action. A member or a lodge may withdraw a grievance placed before a general grievance committee, provided such action is taken before the grievance has been presented by the general grievance committee to the officer of the company, but not thereafter.

All grievances must be handled by the regular local grievance committee, or by the local chairman, if the lodge so directs, before being referred to the general grievance committee for adjustment. Grievances pertaining solely to members employed on a particular road or division or bus line, shall be disposed of by a majority vote of the members of the lodge who hold seniority rights in the class or grade of service involved, who are employed on such road, division or bus line; provided, that at least five such members shall be present to take such action. On small systems, where the office of general chairman is maintained, upon the request of all lodges on each system, the President of

the Brotherhood may issue dispensation permitting the general chairman to handle local grievances. Nothing in this rule shall be construed to prohibit a local lodge from submitting directly to state or national legislative boards matters involving violation of state or federal laws.

No grievance shall be considered by a subordinate lodge unless the member presenting the same was a member in good standing on the date the cause of the grievance originated, except that this does not apply where it is clearly demonstrated that violation of schedule rule is involved.

Appeal from Action of Subordinate Lodge on Grievances.

No. 6. A member who believes that an injustice has been done him by action of his lodge on a grievance submitted by himself or another member of the lodge, may appeal to the President of the Brotherhood in accordance with the provisions of Section 139.

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Failure of Local Committee to Adjust.

No. 8. When the local chairman or grievance committee fails to satisfactorily adjust a grievance referred to it, and if the lodge orders it, the secretary shall immediately send a certified copy of the grievance to the chairman of the general grievance committee. If a time limit is involved, the secretary shall send the certified copy without waiting for the lodge order, and then report his action at the next meeting of the lodge.

Upon receipt of the certified copy of the grievance, the chairman of the general grievance committee shall meet with the secretary of the general grievance committee and, if requested by the lodge concerned, the chairman of the local grievance committee, in the city where the headquarters of the general superintendent or general manager of the carrier for that part of the system on which the grievance exists, is located. Expenses of the local chairman, in such cases, shall be paid by the general grievance committee.

A committee thus constituted may amend, or with the

approval of the President of the Brotherhood, refer to the Legislative Department, any part or all of any complaint or claim submitted to the committee, subject to appeal to the general grievance committee and/or the Board of Appeals. A general grievance committee may authorize its chairman to handle all grievances received from local lodges with the management for settlement. If he fails to obtain settlement, he shall report this to the secretary of the general grievance committee and the chairman of the local lodge where the grievance exists, to determine further procedures.

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The President and the General Committee.

No. 12. The President, or his representative, upon request, shall meet with the General Chairman and renew all honorable methods to effect an amicable and satisfying adjustment of the grievances. Failing in this, the matter shall be referred to the General Grievance Committee, with a concise statement of the controversy, together with the result of the attempt to adjust it with the managing officers of the carrier. If 2/3 of the members of the Committee vote in favor of withdrawing from the service rather than continuing under the conditions specified by the company, the President and the General Grievance Committee shall have the authority to sanction a strike on the system or part thereof that is affected.

Nothing in this Rule shall prohibit the circulation of a referendum strike ballot. When a referendum strike ballot is circulated, 2/3 of the members voting for withdrawal from the service shall be required.

Notwithstanding any other provision of these Rules, the President of the Brotherhood may, at any time that he considers a situation warrants such action, and with the concurrence of two-thirds of the members of the General Grievance Committee, authorize a peaceful withdrawal from service.

In the event of a strike, the President of the Brotherhood shall be the recognized leader, and, in conjunction with the General Secretary and Treasurer, and after having re-

ceived the approval of the Board of Trustees and Insurance, shall have authority to appropriate from the Protective Fund such money for legal advice and incidental expenses as may be required for a successful prosecution of the strike.

The President and General Grievance Committee may terminate a strike, or discontinue any or all strike benefits, but in the event of a difference of opinion as to the termination of a strike, or the discontinuance of benefits, and upon application of either party, the Board of Trustees and Insurance, meeting jointly or separately with the parties, shall decide the question. A decision so reached shall be final; however, nothing in this Rule shall prohibit the submission to the membership of the question of terminating the strike.

When a Vice President or Deputy President is assigned to any property to handle a docket of unsettled cases, and when he is prepared to close out certain cases, the local chairman from the lodge in which such cases originate shall be permitted to be present for discussion of such cases with the Vice President or Deputy President, providing his lodge approves.

When cases that a Grand Lodge officer is preparing to close out involve an interpretation of a standard rule or a matter affecting two or more divisions, or any infringement on the rights of members in yard service against road service, or vice versa, such cases must not be closed out without the approval of the local chairman or chairmen involved.

A Vice President or any Grand Lodge officer shall not close out a dispute when it is indicated that an appeal is being made within the Brotherhood.

Appeals from General Grievance Committee Decisions.

No. 13. Whenever action is taken by the General Grievance Committee of any system shall be law to the lodges on that road or bus line unless reversed by the Board of Appeals. Prompt notice of, and appeal to the Board of Appeals by any affected member or lodge from action of the General Grievance Committee, shall be a stay of action in

the matter pending final determination by the Board of Appeals.

If a member refuses to abide by the action of a General Grievance Committee, he shall be expelled from the Brotherhood for violation of obligation, after not less than 15 days written notice of specific charges, hearing and conviction as provided in this constitution.

Any member who believes an injustice has been done him by the action of a subcommittee may appeal to the General Grievance Committee, or to the Board of Appeals, as he may elect, within one year from the date of the decision. If he decides to appeal to the General Grievance Committee and then is not satisfied with the decision, he may appeal to the Board of Appeals within 90 days after date of decision. In case the General Grievance Committee has not had a meeting at which action has been taken on an appeal, and such appeal is pending, by the Committee, the appellant or lodge from which the grievance emanated may request the General Grievance Committee to refer the same to the Board of Appeals at least 30 days before the convening of the Board. The secretary of the Committee shall comply with the request.

The appellant shall provide the opposing party a copy of his appeal, and the appellee shall provide the appellant a copy of his answer. This shall apply to original appeal and answer and all subsequent correspondence connected with the case.

When an appeal to the Board of Appeals results from a dispute between two lodges or seniority districts, one representative from each lodge or seniority district involved shall be privileged to appear before said Board at regular Committee pay and expense if the General Chairman appears before the Board.

Grievance—Members Authorization.

No. 14. Except in individual cases, where the member involved serves reasonable written notice to the Brotherhood to the contrary, each member of the Brotherhood grants complete authority to the Brotherhood and any of its constituted representatives to act for him and in his

name for the purpose of disposing, in any manner, of any and all of his claims, complaints or grievances against his railroad or motor carrier employers. Each member authorizes the Brotherhood and its representatives to submit such claims, complaints or grievances for determination to any person, board or other tribunal provided by law or otherwise, which to the Brotherhood or its representatives may be necessary or advisable. The Brotherhood and its representatives shall have complete authority to receive notice of hearings, or to waive hearing, and to appear for, represent and act for its members before such person, board or other tribunal in connection with consideration and determination of claims, complaints or grievances; provided, however, that any adverse action by the Brotherhood or its representatives or any such claim, complaint or grievance shall be subject to appeal in accordance with the provisions of this constitution.

Inciting Strikes—Penalty.

No. 15. Any member inciting a strike, or participating therein, by whatsoever name such a strike may be designated, excepting as provided in General Rule 12, shall, upon conviction thereof, be expelled and shall forfeit all his rights as a member of the Brotherhood.

[Procedural provisions in General Rule No. 15 omitted.]

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Protective and Strike Funds.

No. 18. The Brotherhood shall maintain a fund, to be known as the Protective and Strike Funds of the Brotherhood of Railroad Trainmen. Its purpose shall be to protect the interests of its members and to defray the expenses of conducting a strike authorized by the proper authority of the Brotherhood, and to pay the expenses of conducting membership campaigns and protecting the interests of the Brotherhood against detrimental propaganda.

Protective and Strike Funds—Amounts—How Collected.

No. 9. For the maintenance of the Protective Fund each member of the Brotherhood, except non-beneficiary and non-insurance members, and non-beneficiary members who transfer to the sub-standard plan, and/or members who have reached the age of 60, none of which are engaged in yard, train or bus service, or service of the Brotherhood, or members who have been retired on account of receiving a retirement annuity or total and permanent disability by their companies, or members who no longer hold seniority in train, yard or bus service, shall pay twelve dollars a year, in twelve installments.

For the maintenance of the Strike Fund each member who is liable for Protective Fund assessments shall pay three dollars a year, payable in twelve installments, and such assessments shall be used exclusively for strike purposes.

These assessments shall be paid to the treasurer, under the same conditions and penalties prescribed by this constitution for non-payment of monthly dues. On or before the fifteenth day of the month for which assessments are collected, the treasurer shall remit the money collected for the Protective and Strike Funds to the General Secretary and Treasurer, on the form provided for that purpose, observing the rules governing the remittance of assessments.

Protective and Strike Funds—Limits—Penalties.

No. 20. The General Secretary and Treasurer shall keep a record of all receipts from subordinate lodges for this purpose, and make a monthly report of the amount received from each subordinate lodge to all subordinate lodges. When either of these funds reaches five million dollars ($5,000,000), the assessments on that particular fund shall be discontinued until such time as such fund falls below said amount, at which time the assessments for that fund will automatically resume. Any lodge failing to make its returns, shall be subject to the same penalties which attach to non-payment of assessments.

Special Assessments for Protective and Strike Funds.

No. 21. In case of an emergency, if the Protective and Strike Funds are insufficient, the President and General Secretary and Treasurer, in conjunction with the Board of Trustees and Insurance, may levy such additional assessments and in such amounts as are required for the protection of the members; provided that such assessments shall not exceed two dollars a member in any one month. The officers named in this Rule shall be considered a governing body for this purpose and such additional assessments shall be valid until the next regular convention.

Payment from Protective and Strike Funds.

No. 22. When a strike has been inaugurated in accordance with the Rules of the Brotherhood, the president, treasurer, and secretary of all lodges having jurisdiction on the system where the strike is in effect, shall forward to the General Secretary and Treasurer, within ten days after the date that the strike is inaugurated, a sworn statement showing the names, occupations and length of service with the company, of all men under the jurisdiction of the lodge engaged in the strike, including striking members who are working under the jurisdiction of another contracting organization. Striking members working under the jurisdiction of another contracting organization shall be paid the same strike benefits paid to men under jurisdiction of the lodge engaged in the strike.

Members of the Brotherhood who are unemployed due to any recognized union representing employes in the various classes or crafts of railroad employment, being on legal strike, or members not covered by the Railroad Unemployment Insurance Act and paying into the Protective and Strike Funds who are unemployed due to any recognized union being on strike, shall be allowed strike benefits for a period not to exceed 60 days, as though they were active participants in the strike, except that the 60 days limit may be extended in unusual circumstances determined by the President, General Secretary and Treasurer, and the Board of Trustees and Insurance.

Amount of Benefits—When Payable.

No. 23. Striking members shall be paid $100 a month, plus $15.00 for each additional dependent; provided that $145.00 a month shall be the maximum amount payable to any one member, payable semi-monthly during the continuance of the strike. After unemployment benefits have expired, if the strike benefit is payable under the constitution, the benefits shall be increased by $25.00 a month, plus $5.00 for each dependent; provided that $175.00 a month shall be the maximum amount payable to any one member.

On the 15th and last days of the month strike pay rolls shall be prepared by the president, secretary and treasurer of each lodge involved, showing the names of members, and non-members, if any, entitled to benefits by their withdrawal from service at the outset of the strike and fully participated in the strike. This to include members cut off by reduction in force, and not employed in gainful occupation. Members holding regular assignments in conductor service shall be paid the same as other members. The pay roll shall be typewritten or written in ink, listing members at the top in alphabetical order and non-members, if any, at the bottom in like order, and shall show opposite the names listed, the number of days benefits to which each is entitled and the amounts due them. The lodge seal shall be affixed to all strike pay rolls.

The General Secretary and Treasurer, when he receives the pay rolls, by direction of the President, shall draw from the Strike and/or Protective Funds the amount due and pay the same by check, through the treasurers of the several lodges. On receipt of the pay rolls and amounts due thereon, from the General Secretary and Treasurer, the lodge treasurer shall forthwith deliver the checks to the parties, secure their signatures to the pay rolls and return the receipted pay rolls to the General Secretary and Treasurer. Each treasurer shall keep an accurate account of all money received by him.

In the event of a general strike, caused by a concerted or general wage movement, the President and General Secretary and Treasurer, in conjunction with the Vice Presidents

in charge of the strike and the Board of Trustees and Insurance, may determine the suspension of payments of any or of all strike benefits under this Rule, if such action is necessary for the protection of Brotherhood funds.